FILE COPY

Office-Supreme Court, U.S.
FILED
SEP 21 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM 1960

No. 431

FORD MOTOR COMPANY,
Complainant and Appellant,

—against—

CHESTER R. PACE, ET AL.,
Defendants and Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

STATEMENT AS TO JURISDICTION AND APPENDICES

WILLIAM T. GOSSETT
Attorney for Ford Motor Company

Ford Motor Company
The American Road
Dearborn, Michigan

WILLIAM T. GOSSETT
L. HOMER SURBECK
WRIGHT TISDALE
RICHARD B. DARRAGH
RICHARD A. GIVENS
CECIL SIMS
Of Counsel

Dated: September 19, 1960

INDEX

	PAGE
OPINIONS BELOW	1
JURISDICTION	1
(i) Nature of statute and proceedings involved	1
(ii) The appeal is timely	3
(iii) Statutory basis for jurisdiction	3
(iv) Cases sustaining jurisdiction	3
(v) The statute involved	4
QUESTIONS PRESENTED	7
STATEMENT	8
THE QUESTIONS ARE SUBSTANTIAL	9
I. The Violation of Due Process	9
(a) Bias in the tribunal	9
(b) The statutory language is so vague and uncertain that it is impossible to ascertain the limits of the conduct proscribed	16
II. The Statute Imposes an Undue Burden on Interstate Commerce	19
(a) Arbitrary disruption of the flow of commerce	20
(b) Restraints upon the volume of commerce for local economic advantage	21
(c) Restraint upon shipment into other states by compelling allocation to Tennessee	22
(d) Monopolization of channels of distribution	23
III. The Statute Violates the Contract Clause and is Confiscatory in Violation of the Due Process Clause	27
CONCLUSION	29
INDEX TO APPENDICES	v

Cases Cited

	PAGE
A. B. Small Co. v. *American Sugar Refining Co.*, 267 U. S. 233 (1925)	18
Associated Press v. *United States*, 326 U. S. 1 (1945)	26
Avery v. *Georgia*, 345 U. S. 559 (1953)	12
Baldwin v. *G. A. F. Seelig*, 294 U. S. 511 (1935)	22, 23
Berger v. *United States*, 255 U. S. 22 (1921)	15
Bibb v. *Navajo Freight Lines*, 359 U. S. 520 (1959)	22
Boyd v. *General Motors Acceptance Corporation*, 330 S. W. 2d 13 (1959)	15
Brady v. *Trans World Airlines, Inc.*, 167 F. Supp. 469 (D. Del. 1953)	13
Buck v. *Kuykendall*, 267 U. S. 307 (1925)	22
Castle v. *Hayes Freight Lines*, 348 U. S. 61 (1954)	20
Chicago G. W. R. R. Co. v *Basham*, 249 U. S. 164 (1919)	3
Clark v. *Willard*, 292 U. S. 112 (1934)	4
Dean Milk Co. v. *Madison*, 340 U. S. 349 (1951)	20, 23
Department of Banking v. *Pink*, 317 U. S. 264 (1942)	3
Dr. Bonham's Case, 8 Co. Rep. 114a, 2 Brownl. 255, 77 Eng. Rep. 647 (C. P. 1610)	12
Frome United Breweries Co. v. *Bath Justices*, (1926) A. C. 586	13
General Motors Corporation v. *Blevins*, 144 F. Supp. 381 (D. Col. 1956)	18
Hannah v. *Larche*, 363 U. S. 420 (1960)	14
Hansberry v. *Lee*, 311 U. S. 32 (1940)	13
Home Ins. Co. v. *Dick*, 281 U. S. 397 (1930)	4
Hood & Sons v. *Du Mond*, 336 U. S. 525 (1949)	22, 23
Howell Chevrolet Co. v. *NLRB*, 346 U. S. 482 (1953)	19

PAGE

Hughes v. *Board of Comm'rs of City of Chattanooga*, 319 S. W. 2d 481 (1958) 15

Huron Portland Cement Co. v. *City of Detroit*, 362 U. S. 440 (1960) 4, 25

Joseph Burstyn, Inc. v. *Wilson*, 343 U. S. 495 (1952) 17

Indiana ex rel. Anderson v. *Brand*, 303 U. S. 95 (1938) 28

Kunz v. *New York*, 340 U. S. 290 (1951) 18

Leisy v. *Hardin*, 135 U. S. 100 (1890) 20

Madruga v. *Superior Court*, 346 U. S. 556 (1954) .. 4
Morgan v. *Virginia*, 328 U. S. 373 (1946) 22
In re Murchison, 349 U. S. 133 (1955) 12

Nashville C. & St. L. Ry. v. *Wallace*, 288 U. S. 249 (1933) 4
Nippert v. *Richmond*, 327 U. S. 416 (1946) 23
Norris v. *Alabama*, 294 U. S. 587 (1935) 12

Offutt v. *United States*, 348 U. S. 11 (1954) 13

Parker v. *Brown*, 317 U. S. 341 (1943) 25
Pennsylvania R. Co. v. *Rychlik*, 352 U. S. 480 (1957) 15
Pope v. *Atlantic Coast Line R. Co.*, 345 U. S. 379 (1953) 4
Public Utilities Comm'n v. *Pollak*, 343 U. S. 451 (1952) 14

Real Estate Commission v. *McLemore*, 202 Tenn. 540, 306 S. W. 2d 683 (1957) 15
Richfield Oil Corp. v. *State Board of Equalization*, 329 U. S. 69 (1946) 4

Southern Pacific Co. v. *Arizona*, 325 U. S. 761 (1945) 20, 22, 23, 25
St. Joseph Stock Yards Co. v. *United States*, 298 U. S. 38 (1936) 13
Steele v. *L. & N. R. Co.*, 323 U. S. 192 (1944) 13
Strauder v. *West Virginia*, 100 U. S. 303 (1880) 12

PAGE

Thornhill v. *Alabama*, 310 U. S. 88 (1940) 16
Tumey v. *Ohio*, 273 U. S. 510 (1927) 13
United States v. *Cohen Grocery Co.*, 255 U. S. 81 (1921) 18
Whitfield v. *Ohio*, 297 U. S. 431 (1936) 4
Winters v. *New York*, 333 U. S. 507 (1948) 18
Ex parte Young, 209 U. S. 123 (1908) 16

Statutes Cited

Federal Automobile Dealer Franchise Act of 1956, 70 Stat. 1175, 15 U. S. C. §§ 1221-25 19
15 U. S. C. § 1221(e) 16
15 U. S. C. § 1224 25
15 U. S. C. § 1225 25
Sherman Act, 15 U. S. C. § 1 et seq. 25
Tennessee Motor Vehicle Sales Licenses Act, Chapter 17, Tennessee Code Annotated ..... passim
Tennessee Code Annotated § 16-408 3

Legislative History Cited

H. Rep. No. 2850, 84th Cong., 2d Sess. (1956) 23
Automobile Dealer Franchises, Hearings before the Antitrust Subcommittee of the House Committee on the Judiciary on H. R. 11360 and S. 3879, 84th Cong., 2d Sess. (1956) 24-27

INDEX
to
APPENDICES

	PAGE
A—Opinion of Supreme Court of Tennessee	1a
B—Opinion on Rehearing of Supreme Court of Tennessee	18a
C—Order of Supreme Court of Tennessee	21a
D—Opinion of Hon. Ned Lentz, Chancellor	22a
E—Tennessee Motor Vehicle Sales Licenses Act	27a
F—Formal Complaint of Cocke County Motor Company	45a
G—Excerpts from Complaint of Appellant in Chancery Court, Davidson County	50a
H—Excerpt from Deposition of Walter J. Cooper, General Sales Manager of Ford Division, Ford Motor Company, December 19, 1958	52a
I—Excerpts from Deposition of William M. Liddon, former Pontiac dealer, May 7, 1959	54a
J—Notice of Hearing Before Motor Vehicle Commission	55a
K—Excerpts from Deposition of Chester R. Pace, Executive Director, Tennessee Motor Vehicle Commission, May 7, 1959	56a
L—Excerpts from Depositions of David P. Whelchel, Executive Vice-President and General Manager, Tennessee Automotive Association	58a
M—Exhibits 1 through 7 to Deposition of David P. Whelchel filed August 5, 1959	60a
N—Exhibit 35 to Deposition of Walter J. Cooper, December 19, 1958	72a
O—Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958	73a
P—Sales Agreement of Cocke County Motor Company	81a
Q—Notice of Appeal	82a

IN THE

Supreme Court of the United States

OCTOBER TERM 1960

FORD MOTOR COMPANY,
Complainant and Appellant,

—*against*—

CHESTER R. PACE, *et al.*,
Defendants and Appellees.

No. .....

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

STATEMENT AS TO JURISDICTION

Ford Motor Company, appellant herein, respectfully shows as follows:

Opinions Below

The opinion of the Supreme Court of Tennessee (Appendix A) and the opinion on rehearing (Appendix B) are reported in 335 S. W. 2d 360. The opinion of the Chancery Court of Davidson County (Appendix D) is not reported.

Jurisdiction

(i) Nature of proceeding and statute involved.

The Tennessee Motor Vehicle Sales Licenses Act, §§ 59-1701 to 1720, T. C. A., set forth in full in Appendix E, makes it a misdemeanor to engage in the manufacture or sale of motor vehicles in Tennessee as an automobile manufacturer, dealer or salesman without holding a license

under the Act. Appellant applied for its license under protest (Appendix H), stating that the statute was violative of appellant's Federal and state constitutional rights and reserving the right to contest its validity.

The Act establishes a Motor Vehicle Commission, whose members must be appointed from a list submitted by a private group of automotive dealers (§ 59-1703), and which to date has consisted solely of automobile dealers (Appendix L, p. 59a). The Commission is directed to revoke a manufacturer's license if it finds that the manufacturer has cancelled a dealer's franchise "unfairly, without due regard to the equities of said dealer and without just provocation" or done any of the other acts specified as grounds for revocation (§ 59-1714(g), (h)).

Appellant gave notice of termination to a Ford dealer in Newport, Tennessee, engaged in the distribution of Ford vehicles as part of its prosecution of interstate commerce (Appendix N), pursuant to the terms of his franchise (Appendix P), because of insufficient sales (Appendix O). The dealer filed a complaint with the Commission (Appendix F). The Commission cited appellant (Appendix J) to appear and defend itself against the dealer's charges.

Appellant thereupon brought suit in the Chancery Court of Davidson County, Tennessee, for an injunction prohibiting the Commission from proceeding with the hearing on the dealer's complaint and for judgment declaring the Act invalid under both the state constitution and the Due Process and Commerce Clauses of the Federal Constitution (see Appendix G).

The Chancellor held the statute unconstitutional and enjoined the hearing by the Commission (Appendix D). Appeal was taken by the Commission directly to the Supreme Court of Tennessee pursuant to § 16-408, T. C. A., which authorizes direct appeals to the State Supreme Court when constitutionality of a statute is "the sole determinative

question in the litigation". The Supreme Court of Tennessee sustained its jurisdiction under this provision stating, "We take jurisdiction only on the proposition that the constitutionality of the statute is the sole determinative question in the litigation (§ 16-408, T. C. A.). If this were not true, the jurisdiction of the case would be in the Court of Appeals" (Appendix A, p. 1a). On the merits, the Supreme Court of Tennessee sustained the statute and reversed the decree below, passing specifically upon the Federal questions raised in the complaint (Appendix A, pp. 1a, 8a, 9a, 15a, 17a), and, on rehearing (Appendix B) upon the question of the Contract Clause raised by petition for rehearing.

(ii) The appeal is timely.

The opinion of the Supreme Court of Tennessee was filed on March 11, 1960. The decree of reversal was entered on March 15, 1960 (Appendix C). Appellant filed a petition for rehearing, which was entertained by the Supreme Court of Tennessee, but denied by opinion filed May 4, 1960 (Appendix B).

The notice of the appeal to this Court was filed in the Supreme Court of Tennessee on July 28, 1960 (Appendix Q).

The appeal thus is timely. It was filed within 90 days after the judgment of the Supreme Court of Tennessee became final upon denial of the petition for rehearing. *Chicago G. W. R. R. Co.* v. *Basham*, 249 U. S. 164, 167 (1919); *Department of Banking* v. *Pink*, 317 U. S. 264, 266 (1942).

(iii) Statutory basis for jurisdiction.

The Supreme Court of the United States has jurisdiction on appeal under the provisions of Section 1257(2) of Title 28, United States Code.

(iv) Cases sustaining jurisdiction.

The Federal questions were presented in the bill of complaint (Appendix G, pp. 50a, 51a). The Supreme Court of Tennessee rendered a decision in favor of the validity of the statute and, in its opinion, expressly ruled against appellant's contentions that the statute is repugnant to the Commerce, Due Process and Contract Clauses of the Federal Constitution (Appendices A, B, pp. 1a, 8a, 9a, 15a, 17a; 18a-20a). This Court therefore has jurisdiction on appeal. See *Whitfield* v. *Ohio*, 297 U. S. 431, 436 (1936); *Home Ins. Co.* v. *Dick*, 281 U. S. 397, 407 (1930).

Inasmuch as the Supreme Court of Tennessee decided the "sole determinative question in the litigation", nothing remains for the Chancery Court but to dismiss the complaint and dissolve the injunction. Therefore, the order of reversal by the Supreme Court of Tennessee is final for purposes of appeal here. See *Richfield Oil Corp.* v. *State Board of Equalization*, 329 U. S. 69, 72-74 (1946); *Pope* v. *Atlantic Coast Line R. Co.*, 345 U. S. 379, 382 (1953); *Clark* v. *Willard*, 292 U. S. 112, 118 (1934).

The disposition of a suit to enjoin a hearing before a state body is reviewable by this Court. *Huron Portland Cement Co.* v. *City of Detroit*, 362 U. S. 440 (1960); *Madruga* v. *Superior Court*, 346 U. S. 556 (1954). This Court has jurisdiction over the determination of appellant's request for declaration that the statute is violative of the Federal Constitution, as well as over its prayer for injunctive relief. *Nashville C. & St. L. Ry.* v. *Wallace*, 288 U. S. 249, 259-264 (1933).

(v) The statute involved.

The provisions of the Tennessee Motor Vehicle Sales Licenses Act (Ch. 17, §§ 59-1701 to 1720, T. C. A.) are set forth in full in Appendix E. The provisions here involved are as follows:

"* * *

"59-1703. Motor vehicle commission.—Appointment and qualifications of members.—There is hereby created the Tennessee motor vehicle commission to be composed of one (1) member from each of the nine (9) congressional districts of the state, and a chairman to be selected from the state at large, all to be selected and appointed by the governor of the State of Tennessee *from such list of properly qualified candidates, * * * as may be furnished to the governor by the Tennessee automotive association.* Each of the commissioners * * * shall * * * have been actually engaged in the manufacture, distribution, or sale of motor vehicles in the state of Tennessee for not less than five (5) consecutive years next preceding such appointment, and each must * * * be a holder of * * * a license at all times while a member of said commission. * * * (Emphasis added)

* * *

"59-1709. Activities for which license required. —(a) It shall be unlawful and constitute a misdemeanor for any person, firm, association, corporation or trust to engage in business as, or serve in the capacity of, or act as a manufacturer, distributor, or wholesaler, factory branch or distributor branch, factory representative, or distributor representative in this state without first obtaining a license therefor as provided in §§ 59-1710—59-1713.

* * *

"59-1714. Grounds for denial, suspension, or revocation of license.—The commission may deny an application for a license or revoke or suspend a license after it has been granted for any of the following reasons:

* * *

"(g) Being a manufacturer of [motor vehicles] * * * who has coerced or attempted to coerce any motor vehicle dealer:

"(1) To order or accept delivery of *any* motor vehicle or vehicles, appliances, equipment, parts, or accessories therefor or any other commodity or commodities which shall not have been *voluntarily* ordered by said motor vehicle dealer. (Emphasis added)

* * *

"(h) Being a manufacturer of motor vehicles, * * * who:

"(1) Has refused to deliver to any duly licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new and unused motor vehicles sold or distributed by such manufacturer, * * * any motor vehicle publicly advertised for immediate delivery within sixty (60) days after such dealer's order shall have been received.

* * *

"(4) Has unfairly, without due regard to the equities of the said dealer and without just provocation, canceled the franchise of any motor vehicle dealer. * * *

* * *

"(6) Has attempted to enter into a franchise agreement with a dealer who does not at the time of the franchise agreement have proper facilities to provide the services to his purchasers of new automobiles which are guaranteed by the new car warranties issued by the manufacturers.

* * *

"59-1715. Hearing mandatory—Notice—Witnesses.— * * * if the commission shall *determine* that any licensee is *guilty* of *violation* of this chapter, his or its license *shall* be suspended or *revoked*. (Emphasis added)

* * *"

Federal Questions Presented

I. Whether the provisions of the statute authorizing revocation of a manufacturer's license by the Motor Vehicle Commission are invalid, on their face or as applied to appellant, under the Due Process Clause of the Fourteenth Amendment of the Federal Constitution since:

A. Bias and prejudice against the manufacturer, and pecuniary interest in issues before the Commission, are inherent in the Commission because

(1) the statute (§ 59-1703), as applied and as interpreted by the Supreme Court of Tennessee, requires that the Commission be composed exclusively of automobile dealers who are selected from a list supplied by a private association of automotive dealers; in spite of the fact that

(2) each of the grounds for revocation specified in § 59-1714(g) and (h) of the statute involves controversies between a manufacturer and a dealer as to which dealers cannot be considered impartial and in which members of the Commission, all of whom are automobile dealers and a majority of whom are franchised new car dealers, have a pecuniary interest.

B. The statutory language is so vague and uncertain that it is not reasonably possible to ascertain the limits of the conduct proscribed.

II. Whether the statute is repugnant to the Commerce Clause of the Federal Constitution, Art. I, § 8, cl. 3, since it unduly interferes with the flow of interstate commerce without clear necessity to do so by:

A. Authorizing disruption of interstate commerce through mandatory revocation or suspension of a motor vehicle manufacturer's license to do business in the State of Tennessee if the Commission shall find that such manufacturer has violated the statute in its relations with a single dealer.

B. Imposing restraints upon the volume of interstate commerce for local economic advantage by:

"(1) prohibiting a motor vehicle manufacturer from requiring a dealer to order or accept delivery of 'any' new vehicle not 'voluntarily' ordered, even though the dealer may have failed to exert sufficient sales effort to fulfill his agreement and to give the manufacturer adequate representation;

(2) requiring that a motor vehicle manufacturer deliver to Tennessee dealers all vehicles that are publicly advertised for immediate delivery, within 60 days after ordered, even though there is a shortage in interstate commerce as frequently occurs when new models are first introduced; and

(3) imposing undue restrictions upon termination of ineffective dealers and upon enfranchisement of replacement dealers and additional dealers.

III. Whether the statute, as applied to appellant, violates the Contract Clause of the Federal Constitution, Art. I, § 10, and the Due Process Clause of the Fourteenth Amendment by impairing, without clear necessity, the exercise of appellant's contractual right to terminate ineffective dealers.

Statement

See the facts set forth under "Nature of proceeding and statute involved", p. 2-3 *supra*.

The Federal Questions are Substantial

I. THE VIOLATION OF DUE PROCESS

(a) Bias in the Tribunal

Section 59-1703 of the statute, as applied, makes certain the presence of prejudice and pecuniary interest in the Tennessee Motor Vehicle Commission ("Commission").

All ten of the members of the Commission, authorized by the statute to hear dealers' charges against appellant, are current automobile dealers (Appendix L, p. 59a). As said by the Supreme Court of Tennessee in its opinion (Appendix A, p. 12a):

> "A rather vicious attack is made upon the Section of the Act (59-1703) *which makes the Commission consist solely of dealers* who are selected by the Governor *from a list submitted by the Tennessee Automotive Association.*" (Emphasis added)

According to the defendant Pace, the Executive Director of the Commission, the statute was sponsored and lobbied through the legislature by the same Association (Appendix K, p. 57a).

The Association interpreted its duty under the statute to be to submit only "dealers" as nominees for the Commission. Exhibits 1-7 of the deposition of the Vice President and General Manager of the Association (Appendix M, p. 60a) set forth resolutions of the Association specifying the lists of names submitted to the Governor for nomination to the Commission. Each one on each list was stated to be an automobile "dealer". The preambles to each such resolution were similar to the first, which was as follows:

> "Whereas, by Section 3 of Chapter 79 of the Public Acts of 1955 (Section 59-1703) Tennessee

> Automotive Association is charged with the *duty* of submitting the names of at least *20 automobile dealers,* * * * from which the Governor will appoint the Tennessee Motor Vehicle Commission; * * *." (Emphasis added)

Nine of the ten present members of the Commission are enfranchised new car dealers; one is a used car dealer (Appendix L, p. 59a). Although lists submitted by the Association* contained the names of several used car dealers, the Association by another resolution stated that it was important to explain to used car dealers

> "* * * the need for a majority of franchised dealers being on the Commission for the reasons that a higher percentage of the problems raised are related to matters between the manufacturer and the franchised dealer * * *." (Appendix M, p. 68a)

Each of the grounds specified in subparagraphs (g) and (h) of § 59-1714 involves disputes between manufacturers and dealers on which opinions may reasonably differ.

Thus, (h)(1) has its chief impact when demand for the new vehicles is in excess of supply and a manufacturer must allocate cars among all its dealers throughout the United States. For example, during the early part of a model year, the dealer can sell cars with little price competition or sales effort. As a result, the dealer makes a relatively high profit per new car sold. During this period the dealer implores the manufacturer to allocate a larger share of cars to his dealership than would be fair in the circumstances. Subdivision (h)(1) compels preference for Tennessee dealers over consumers and dealers in other states

---

*Most of the new car dealers in Tennessee, called "franchised car dealers", are members of the Tennessee Automotive Association, and constitute about 90% of the membership of that Association (Appendix L, p. 58a).

in the distribution of new models, by providing for revocation of the license of a manufacturer who has "refused" to deliver to any Tennessee dealer, within 60 days after order, any vehicle publicly advertised for immediate delivery.

Later in the season, however, as the production of new models increases, the shortage disappears, and the manufacturer often endeavors to persuade dealers to order and sell more cars. At this time, increasing price competition from other dealers normally is encountered and greater sales effort is required by the dealer. As a result, a large volume of sales can be achieved only if the dealer is willing to accept a lower profit per car sold (Appendix I, p. 54a). During this period the manufacturer implores each dealer to order and sell more cars. But (g)(1) is designed to inhibit the efforts of the manufacturer to induce the dealer to order and accept such cars.

Differences of opinion between manufacturers and dealers are also involved in the issues in this case under subdivision (h)(4) relating to termination inasmuch as (h)(4) tends to prevent termination as a means of eliminating dealers who, shielded by (g)(1), (2) and (3), do not make sufficient purchases and sales to provide adequate representation for the manufacturers.

In addition to the prejudice created by the fact that each Commissioner is a dealer,* the requirements of § 59-1703 that each also be a holder of a license ensures current pecuniary interest in matters coming before them involving disputes between manufacturers and franchised dealers.

Each new car dealer on the Commission has a direct interest in the most far-reaching interpretation and enforce-

*Indeed, the Hearing Officer of the Commission (the defendant Pace, also the Executive Director) in his testimony disclosed facts from which actual prejudice on his part might be inferred from his characterization of his experiences as a dealer. (Appendix K, p. 56a.)

ment of these provisions against appellant. In fact, there must be present in the mind of each such dealer an awareness of the possibility that some day he himself may file an identical charge against the manufacturer who enfranchised him. Those Commissioners who are franchised by the *same* manufacturer as the complaining dealer are even more obviously identified in interest with the complainant because a ruling in favor of the complaining dealer assures identical protection throughout the state for all dealers in that category, including members of the Commission.

Each Commissioner also has a pecuniary interest as an actual or potential competitor of the complaining dealer. For example, if the complainant is a Ford dealer, the Commissioners who are Chrysler or General Motors dealers have a pecuniary interest in vigorous enforcement of (g)(1) and (h)(4) and (6), against Ford in order to curtail statewide selling efforts of Ford and its dealers, thus reducing actual or potential competition by Ford products.

Bias through both prejudice and pecuniary interest is *inherent* in the statutory scheme; instead of preventing bias, the statutory scheme, as administered, is calculated to assure bias.* The statutory scheme is therefore the deliberately created antithesis of due process.

The rule is stated by Mr. Justice Black in *In Re Murchison*, 349 U. S. 133, 136 (1955):

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to *prevent* even the probability of unfairness. * * * This

*Systematic bias in the composition of a tribunal has also been held to violate the Equal Protection Clause. *Avery* v. *Georgia*, 345 U. S. 559 (1953); *Norris* v. *Alabama*, 294 U. S. 587 (1935); *Strauder* v. *West Virginia*, 100 U. S. 303 (1880). These decisions implement the basic tradition of requiring an impartial tribunal, represented by *Dr. Bonham's Case*, 8 Co. Rep. 114a, 2 *Brownl.* 255, 77 Eng. Rep. 647 (C. P.) as early as 1610.

> Court has said, * * * that 'every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law.' *Tumey* v. *Ohio*, 273 U. S. 510, 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the *appearance* of justice.' *Offutt* v. *United States*, 348 U. S. 11, 14." (Emphasis added)

And this Court stated in *Tumey* v. *Ohio*, 273 U. S. 510, 535 (1927):

> "* * * No matter what the evidence was against [a party] he had the right to have an impartial judge. * * *"

The foregoing statements of principle apply to civil as well as criminal cases. See *Steele* v. *L. & N. R. Co.*, 323 U. S. 192, 205-6 (1944); *Hansberry* v. *Lee*, 311 U. S. 32, 45 (1940); *Brady* v. *Trans World Airlines, Inc.*, 167 F. Supp. 469, 472 (D. Del. 1953). Thus, Mr. Justice Brandeis, concurring in the rate determination case of *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38 (1936), pointed out that (p. 73):

> "* * * The inexorable safeguard which the due process clause assures is not that a court may examine whether the findings * * * are correct, but that the trier of the facts shall be an impartial tribunal: * * *."

In the leading House of Lords case of *Frome United Breweries Co.* v. *Bath Justices*, (1926) A. C. 586, where denial of renewal of a license was set aside on the ground that there was a real likelihood that the tribunal was biased. Viscount Cave said (p. 590):

> "My Lords, if there is one principle which forms an integral part of the English law, it is that every member of a body engaged in a judicial proceeding must be able to act judicially; and * * * if a member of such a body is subject to a bias (whether financial or other) in favour of or against either party to the dispute or is in such a position that a bias must be *assumed,* he ought not to take part in the decision or even to sit upon the tribunal. This rule has been asserted, not only in the case of Courts of justice and other judicial tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act as judges of the rights of others. * * *" (Emphasis added)

See the similar standards enunciated by Mr. Justice Frankfurter in *Public Utilities Comm'n* v. *Pollak,* 343 U. S. 451, 466-67 (1952).

These principles apply here, because as stated in *Hannah* v. *Larche,* 363 U. S. 420, 442 (1960), "* * * when governmental agencies *adjudicate or make binding determinations which directly affect the legal rights of individuals,* it is *imperative* that those agencies use the procedures which have *traditionally been associated with the judicial process.* * * *". (Emphasis added)

The prejudicial effect of the bias in the Commission renders the statute especially lacking in due process because free play of bias could be the controlling factor in a determination against appellant, without any assurance of detection upon judicial review. The grounds specified in § 59-1714(g) and (h) of the statute for revocation of a manufacturer's license, by their terms call for ultimate conclusions to be reached by the Commission based on their opinions in matters as to which reasonable men may differ. Opinions on whether an order was "coerced" or "voluntary"; or whether a cancellation of a franchise was made "unfairly", or "without just provocation", or "without due

regard to the equities of the said dealer" will vary from man to man and necessarily be influenced by whether the one giving vent to his opinion is engaged as a manufacturer or dealer. Thus, the latent effect of any bias could never be evaluated on review of a Commission decision.

In *Berger* v. *United States*, 255 U. S. 22, 36 (1921), this Court said:

> "* * * The remedy by appeal is inadequate. It comes after the trial and, if prejudice exist, it has worked its evil and a judgment of it in a reviewing tribunal is precarious. It goes there fortified by presumptions, and nothing can be more elusive of estimate or decision than a disposition of a mind in which there is a personal ingredient."

The principle was recognized by Mr. Justice Harlan in *Pennsylvania R. Co.* v. *Rychlik*, 352 U. S. 480, 496 (1957):

> "* * * What is to be the scope of such [judicial] review? How is the inherent bias of * * * members of these boards to be overcome? * * * "

Furthermore, even though § 59-1717 T. C. A. provides for judicial review, under Tennessee law only the question of whether the Commission acted within its jurisdiction, illegally, arbitrarily or fraudulently will be open to review.*

The prejudice to appellant by reason of bias in the tribunal is further aggravated by a mandatory penalty that is unnecessarily harsh. In contrast to a provision for compensatory damages, the statute directs revocation or suspension of appellant's license to continue business relations with all of its dealers in the State. The *in terrorem* effect of the statutory scheme thus is obvious. The threat of loss

---

*See *Real Estate Commission* v. *McLemore*, 202 Tenn. 540, 306 S. W. 2d 683 (1957); *Hughes* v. *Board of Com'rs of City of Chattanooga*, 319 S. W. 2d 481 (1958); *Boyd* v. *General Motors Acceptance Corporation*, 330 S. W. 2d 13 (1959).

of a license to do business in the state necessarily tends to force manufacturers to avoid submission to an inherently biased Commission of controversies with individual dealers, and instead to forego their rights in such controversies regardless of the merits for fear of losing their licenses to do business in the state. This is, in itself, a further denial of due process. See *Ex parte Young*, 209 U. S. 123 (1908); *Thornhill* v. *Alabama*, 310 U. S. 88, 97 (1940).

(b) The statutory language is so vague and uncertain that it is impossible to ascertain the limits of the conduct proscribed.

Section 59-1714(g)(1) fails to provide any ascertainable standard as to what extent mere salesmanship on the part of appellant would constitute having "attempted to coerce any motor vehicle dealer" to order vehicles "which shall not have been *voluntarily* ordered by said motor vehicle dealer." By contrast with the Tennessee statute, the Federal Automobile Dealer Franchise Act specifically provides that "recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith." 15 U. S. C. § 1221(e).

An ascertainable standard likewise is lacking in § 59-1714(h)(4), which provides for revocation where a manufacturer cancels a franchise

> "* * * unfairly, without due regard to the equities of said dealer and without just provocation * * *."

The Supreme Court of Tennessee held that these words could be "fairly" administered by simply applying "the ordinary meaning of such terms" (Appendix A, p. 11a). But there is no recognized meaning for the term "equities of the said dealer", especially where the franchise is terminable at will. The terms "equities of said dealer" and "just provocation" are so vague as to leave appellant uncertain as to

what conduct will or will not subject it to the drastic penalty of loss of its license to do business in the State. There is no way in which appellant could guide its conduct so as to be assured that it was within the statutory standards, because these terms have no definite meaning in the context of a contractual relationship with a distributor which is terminable by either party on notice under the agreement.

Section 59-1714(g)(1) would indicate that "just provocation" does not include failure of the dealer to give adequate representation; but beyond this, appellant is given no guidance. The term "equities of said dealer" *could* refer to any number of factors such as length of service, investment, past profitability, or others, but the statute is silent as to which factors *are* relevant. The effect, if the Act is sustained, is necessarily to inhibit appellant from canceling any dealer's franchise for any reason because of uncertainty as to whether license revocation may follow.

When the inherently vague term "unfairly" is placed in juxtaposition with "the equities of said dealer", a term without any distinctive or definite meaning of its own, the combined effect is to authorize the Commission to act by subjective determination unconstrained by any ascertainable standard. This results in a denial of due process within the principles enunciated by Mr. Justice Frankfurter in his concurring opinion in *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495 (1952), where he said (532):

> "* * * Prohibition through words that fail to convey what is permitted and what is prohibited for want of appropriate objective standards, offends Due Process in two ways. First, it does not sufficiently apprise those bent on obedience of law of what may reasonably be foreseen to be found illicit by the law-enforcing authority, whether court or jury or administrative agency. Secondly, where licensing is rested, in the first instance, in an administrative agency, the available judicial review is in effect rendered inoperative. * * *"

Justice Frankfurter cited: *United States* v. *Cohen Grocery Co.*, 255 U. S. 81 (1921); *A. B. Small Co.* v. *American Sugar Refining Co.*, 267 U. S. 233 (1925); *Winters* v. *New York*, 333 U. S. 507 (1948); *Kunz* v. *New York*, 340 U. S. 290 (1951).

It makes no difference that the statute may impose license revocation rather than a criminal penalty as its sanction, particularly where the impact could be as drastic as here. As said in *A. B. Small* v. *American Sugar Refining Co.*, *supra* (p. 239):

> "The defendant attempts to distinguish those cases because they were criminal prosecutions. But that is not an adequate distinction. The ground or principle of the decisions was not such as to be applicable only to criminal prosecutions. It was not the criminal penalty that was held invalid, but the exaction of obedience to a rule or standard which was so vague and indefinite as really to be no rule or standard at all. * * *".

Words identical to those in subdivision (h)(4) were held to be fatally vague, as used in a Colorado statute, when they came under scrutiny by a three-judge Federal Court in *General Motors Corporation* v. *Blevins*, 144 F. Supp. 381 (D. C. Col. 1956). There, the Court said (395-96):

> "General Motors urges that this part of the 1955 act violates the Fourteenth Amendment in that it fails to provide an ascertainable standard of guilt and hence denies due process. We agree.
>
> * * *
>
> "The section of the 1955 act now under consideration uses the terms 'unfairly', 'without due regard to the equities', and 'without just provocation'. These involve 'so many factors of varying effect that neither the person to decide in advance nor the jury to try him after the fact can safely and certainly judge the result'. *Cline* v. *Frink Dairy Co.*, supra,

274 U. S. at page 465, 47 S. Ct. at page 687. Accordingly, due process is denied."

No appeal was taken to this Court from the decision in the *Blevins* case.

II. THE STATUTE IMPOSES AN UNDUE BURDEN ON INTERSTATE COMMERCE.

Each of appellant's franchised dealers in the State of Tennessee constitutes an integral part of its system for national distribution of automotive vehicles in interstate commerce. See Appendix N; *Howell Chevrolet Co.* v. *NLRB*, 346 U. S. 482 (1953).

The volume of vehicles sold by a manufacturer in commerce in Tennessee is governed by the effectiveness of its dealers in making sales. Where a particular dealer's sales consistently fall significantly below the average sales of other dealers comparably situated, it becomes necessary for the manufacturer to consider replacing the dealer. In such circumstances, the dealer usually resigns and sells out to a successor because his operations are as unsatisfactory to him as they are to the manufacturer. Occasionally, however, such a dealer refuses to resign, necessitating cancellation of his sales agreement.

In recent years, dealers have resorted to political action to obtain Federal and state legislation concerning the termination problem. The Congress, mindful of its prime responsibility for the regulation of interstate commerce, has approached the problem in a manner calculated to safeguard the free interplay of competitive forces in commerce. To this end, the Congress placed no restriction upon a manufacturer's right to sell in commerce, to replace inefficient dealers, or to appoint added dealers where required to remain competitive (70 Stat. 1175; 15 USCA §§ 1221-25).

The Federal Act simply gave to dealers a right to sue in the Federal courts for compensatory damages without in any way affecting the manufacturers' rights to continue to do business and to take all reasonable steps to maintain and enhance the efficiency and competitiveness of their dealer outlets.*

By contrast, Tennessee has approached the problem by placing heavy burdens and restrictions on the free flow of interstate commerce.

(a) Arbitrary disruption of the flow of commerce.

Instead of attempting to provide compensation for a dealer allegedly wronged, as does the Federal Act, the Tennessee statute adopts the sole sanction of threatening to stop the entire flow of the manufacturer's vehicles into the state through revocation or suspension of the manufacturer's license to do business in the state. This is a drastic and wholly unnecessary** obstruction of interstate commerce. Complete exclusion of an interstate business from a state has always raised serious questions under the Commerce Clause. See *Castle* v. *Hayes Freight Lines*, 348 U. S. 61 (1954); *Leisy* v. *Hardin*, 135 U. S. 100 (1890).

To permit a state to disrupt interstate commerce so drastically without any clear necessity to do so would be destructive of the very purpose of the Commerce Clause. See *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 781-82 (1945); cf. *Dean Milk Co.* v. *Madison*, 340 U. S. 349, 356 (1951).

---

*The Federal Act, however, raises several other serious questions, some of a constitutional nature, which ultimately may have to be resolved by this Court.

**See the opinion of the Chancellor, Appendix D, p. 23a-24a.

(b) Restraints upon the volume of commerce for local economic advantage.

The combined effect of the provisions of § 59-1714(g) and (h) of the statute is to regulate the flow of commerce for the economic benefit of local dealers.

Section 59-1714(g)(1) enables a Tennessee dealer to prevent a manufacturer from requiring him to provide effective sales representation* as a condition to his use of the manufacturer's name and to the grant to him of the opportunity to purchase automobiles at wholesale prices. This tends to prevent reaching by the manufacturer of his potential market in interstate commerce.

Section 59-1714(h)(4) effectively prevents appellant, upon pain of exclusion from the state, from terminating its relationship with a dealer even though he refuses to order enough vehicles to satisfy the potential demand as revealed by the orders of other dealers and by new car registrations of competitive vehicles in the same price-class. At the same time the appointment of additional dealers to reach the untapped demand is deterred. Subsection (h)(6) makes it a cause for license revocation to appoint a new dealer unless "at the time of the franchise agreement" he already has "proper facilities". This is a condition which, as a practical matter, often can be satisfied only where an existing dealer voluntarily resigns and sells his facilities to the replacement dealer. Where there is no existing dealer, obviously assurance of the franchise must precede the acquisition of facilities.

The combined effect of § 59-1714(g)(1), (h)(4) and (h)(6), therefore, is to enable franchised new car dealers

*The complaining dealer in the case at bar was notified of termination for failure to perform his obligations under the Ford franchise. Appendix F sets forth the dealer's charge; Appendix O sets forth a summary of the evidence showing unsatisfactory sales and operations by this dealer necessitating termination.

in Tennessee to limit the flow of commerce into Tennessee to shield themselves from the competition of vehicles which would otherwise move into the state. As a result, the franchised automotive dealer in Tennessee is able to stand as a barrier between the manufacturer and the potential customers and, in effect, set up a toll gate which limits the flow of vehicles to customers to that volume which the dealer finds will yield him the profit per new car sold which he deems best suited to his own interests. State regulations of interstate commerce affecting interests outside the State, as here, have been subjected to exacting scrutiny by this Court because the normal political restraints relied upon to assure the fairness of legislation are absent where the interests affected are not represented in the state Legislature. See *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 767-8 n. 2 (1945) and cases cited.

Here the burden is severe, and possible benefit to local economic interests such as the Tennessee dealers cannot justify the detriment to interstate commerce imposed by the statute. See *Hood & Sons* v. *Du Mond*, 336 U. S. 525, 530-39 (1948); *Baldwin* v. *G. A. F. Seelig*, 294 U. S. 511 (1935); *Buck* v. *Kuykendall*, 267 U. S. 307, 315 (1925). In these circumstances, the severe burden upon commerce imposed by the statute cannot be sustained. Compare *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761 (1945); *Morgan* v. *Virginia*, 328 U. S. 373 (1946); *Bibb* v. *Navajo Freight Lines*, 359 U. S. 520 (1959).

(c) Restraint upon shipment into other states by compelling allocation to Tennessee.

The effect of § 59-1714(h)(1) is to require a manufacturer, during periods of shortage, to allocate to the State of Tennessee every vehicle publicly advertised for immediate delivery within 60 days after order by a Tennessee dealer. Since each manufacturer spends large sums in national ad-

vertising to stimulate demand in every state, the effect of the statute is to compel manufacturers to curtail allocations of vehicles to other states in order to comply with orders from Tennessee dealers. The result is discrimination against other states and in favor of Tennessee, which is prohibited by the Commerce Clause. *See Dean Milk Co.* v. *Madison*, 340 U. S. 349 (1951); *Nippert* v. *Richmond*, 327 U. S. 416 (1946). In addition, the provision reaches out beyond the borders of the state to compel action for local benefit, which is also in violation of the Commerce Clause. *Baldwin* v. *G. A. F. Seelig*, 294 U. S. 511, 521 (1935).

The combined effect of the subdivisions (g) and (h) is to Balkanize areas of commerce in violation of the basic concept of our Federal Constitution that the states shall constitute a single economic unit. *See Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 769-781 (1945); *Hood & Sons* v. *Du Mond*, 336 U. S. 525, 532 (1949).

(d) Monopolization of channels of distribution.

The tendency of the Tennessee statute to freeze existing outlets, contrary to the policies of the Federal antitrust laws, is further implemented by the wording "without due regard to the *equities* of the said dealer" in § 59-1707-(h)(4). The Congress of the United States rejected comparable language proposed for the Federal Automobile Dealer Franchise Act in 1956. The Senate bill (S. 3879) had required manufacturers to act in a "fair, equitable and nonarbitrary manner so as to guarantee" the dealer freedom from "coercion" and "to preserve all the equities" of the dealer which are "inherent in the nature of the relationship". This language was dropped, however, by amendment in the House, as pointed out in the House Report on the bill (H. Rep. No. 2850, 84th Cong. 2d Sess. (1956) pp. 8-10):

> "* * * the committee deleted the provision which would require a party to a franchise to preserve 'all

the 'equities' of the other party which are inherent in the nature of the franchise relationship. This has been done to preclude any interpretation inconsistent with antitrust principles. * * *"

* * *

"The bill * * * does not prohibit the manufacturer from terminating or refusing to renew the franchise of a dealer who is not providing the manufacturer with adequate representation. Nor does the bill curtail the manufacturer's right to cancel or not to renew an inefficient or undesirable dealer's franchise.

"The bill does not freeze present channels or methods of automobile distribution and would not prohibit a manufacturer from appointing an additional dealer in a community provided that the establishment of the new dealer is not a device by the manufacturer to coerce or intimidate an existing dealer. The committee emphasizes that the bill does not afford the dealer the right to be free from competition from additional franchise dealers. Appointment of added dealers in an area is a normal competitive method for securing better distribution and curtailment of this right would be inconsistent with the antitrust objectives of this legislation. Under the bill, a manufacturer does not guarantee the dealer profitable operation or freedom from depletion of investment."

The background of the rejection of the "equities of the dealer" language by the House Committee is particularly significant.

During the hearings, Herbert N. Maletz, counsel for the Committee, quoted as follows from a letter to the Committee by Attorney General William P. Rogers:

"* * * Antitrust difficulties * * * are immediately apparent. In the light of automobile industry history for example, the term 'equities of the dealer' might well include the dealer's right to be free from competition from added franchise dealers. * * *

"As a result, this language might deprive newcomers of their fair chance to enter the auto-dealer business and, in the process, seriously restrain distribution of new cars.

"Even more broadly, this phrasing could be read to require a manufacturer to guarantee against a dealer's unprofitable operation or depreciation of investment * * *.

"* * * H. R. 11360 * * * could apply to a manufacturer * * * to gear his production and distribution, to preserve each dealer's profitable investment.

"Thus, building for dealers a sanctuary from the rigors of competition seems at odds with the basic principles of antitrust. It could effectively prevent manufacturers from responding with production or price changes to the stimuli of a free market. * * *" (*Automobile Dealer Franchises*, Hearings before the Antitrust Subcommittee of the House Committee on the Judiciary on H. R. 11360 and S. 3879, 84th Cong., 2d Sess. at 18-19 (1956)).

By its use of terms expressly rejected by Congress, the Tennessee Act invites the kind of anti-competitive consequences that the Congress sought to avoid when it passed the Federal Act.

This legislative history of the Federal Act, the national policies underlying the Sherman Act itself, and the provision of the Federal Act (15 U. S. C. § 1224) to the effect that it shall not even "indirectly" modify the antitrust laws, are relevant to the balancing of conflicting local and national interests under the Commerce Clause. See *Huron Portland Cement Co.* v. *Detroit*, 362 U. S. 440, 446 (1960); *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 773 (1945); *Parker* v. *Brown*, 317 U. S. 341, 367 (1943). And in light of § 1224, the further provision (§ 1225)—to the effect that the Federal Act will not supersede state law except in case of "direct conflict"—cannot be taken as congressional

consent to the type of regulation of commerce involved here, which is offensive to both antitrust principles and the Commerce Clause as interpreted by this Court.

While subdivisions (g) and (h) of the Tennessee Act are phrased in terms of action affecting the individual dealer, the overall effect of the statue is a regulation of the volume and channels of interstate commerce in automotive vehicles by a private group, the Tennessee Automotive Association, which nominates all members of the Commission. As pointed out by the Chancellor in his opinion (Appendix D, p. 23a), the statute vests the Commission with "such power that it *would* control the automotive business in the entire state of Tennessee". (Emphasis added)

The end result is thus a power of regulation and restraint over commerce contrary to the Commerce Clause and the policies of the Federal antitrust laws, recognized by Congress in the Federal Automobile Dealer Franchise Act. The antitrust implications are comparable to those found by this Court in *Associated Press* v. *United States*, 326 U. S. 1, 19 (1945):

> "* * * Here as in the *Fashion Originators' Guild* case, 'the combination is in reality an extra-governmental agency, which prescribes rules for the regulation and restraint of interstate commerce, and provides extra-judicial tribunals for determination and punishment of violations, and thus "*trenches upon the power of the national legislature* and violates the statute." '* * *" (Emphasis added)

In this regard, the following discussion during the appearance of Hon. Robert A. Bicks, then Legal Assistant to the Assistant Attorney General in charge of the Antitrust Division, before the House Subcommittee is particularly significant:

> "Mr. Bicks. * * * this phrasing ['equities of the dealer'] could tend to perpetuate existing dealers in

business—regardless of market pressures—and, indeed, require each manufacturer to guarantee against unprofitable operation or depletion of investment.

"Mr. McCulloch. I would like to interrupt right there.

"If that would result, isn't that contrary to all the concepts and all the experiences in our economic life in America up to this time?

"Mr. Bicks. Absolutely, it is completely inconsistent with our private-enterprise system.

"Mr. Keating. It is completely inconsistent with our free-enterprise system, is it not?

"Mr. Bicks. It is a return to something akin to medieval guild concept.

"Mr. Keating. It would freeze established dealers and prevent new dealers from going into the business?

"Mr. Bicks. That is absolutely right.

"Mr. Keating. It is inconceivable that Congress would do a thing like that.

"Mr. McCulloch. It certainly wouldn't be in the best interests of the consumer, or the purchasers, or the dealers.* * *" *Automobile Dealer Franchises,* Hearings before the Antitrust Subcommittee of the House Committee on the Judiciary, on H. R. 11360 and S. 3879, 84th Cong., 2d Sess. (1956), p. 263. See also Mr. Bicks' prepared statement, *id.* at 267, 274.

III. THE STATUTE VIOLATES THE CONTRACT CLAUSE AND IS CONFISCATORY IN VIOLATION OF THE DUE PROCESS CLAUSE.

Appellant has expended many millions of dollars in plants, equipment and facilities to manufacture motor vehicles for sale in interstate commerce. Its system for national distribution consists of franchised dealers throughout the United States, which it has assembled at great expense over a period of many years. Appellant is capable of

earning a return on its investment only in proportion to the effectiveness of its dealers in the sale of vehicles in competition with dealers for other manufacturers.

A Ford franchise enables a dealer to join, and be an integral part of, this well established nation-wide system of distribution of readily salable products. From the outset, the dealer trades on the good will of Ford. The demand for the product is such that he is assured of a substantial volume of business that comes under the Ford sign. If a Ford dealer does no more than take orders, he is in the nature of a free-loader; he skims the cream; he generates no business in competition with other make vehicles; and he provides little or no price competition for the benefit of the consumers.

The Ford franchise, adopted prior to passage of the Tennessee Statute, contemplates that the dealer would "develop" the sale of Ford products and that, if he failed to do so, the privilege of remaining an authorized dealer, of trading under the Ford name, would be withdrawn by termination on notice (Appendix P, p. 81a).

The right to terminate relations with dealers whose performance is unsatisfactory is essential where the dealer cannot or will not fulfill his obligations under the franchise agreement. The Tennessee Statute, as applied to the complaining dealer here, seriously impairs (without controlling justification in the public interest [cf. *Indiana ex rel. Anderson* v. *Brand*, 303 U. S. 95, 108-09 (1938)]) that right of appellant, a right that it must have if it ultimately is to maintain the efficiency of its distribution system. It therefore violates the Contract Clause of the Constitution of the United States.

The Tennessee Statute also constitutes a taking of appellant's property without due process of law by impairing the right to terminate for inefficiency in sales. The effect is to appropriate appellant's investment in the plants and facilities, located outside the state, for the benefit of the

existing Tennessee dealers to whom the statute transfers all control over the volume of sales of appellant's products to customers in the state. This constitutes confiscation of appellant's contracts and properties for the economic advantage of the dealers in Tennessee in violation of the Due Process Clause, as well as the Commerce Clause.

CONCLUSION

It is respectfully submitted that this Court has jurisdiction of this appeal and the questions presented are so substantial as to require plenary consideration with briefs on the merits and oral argument for their resolution.

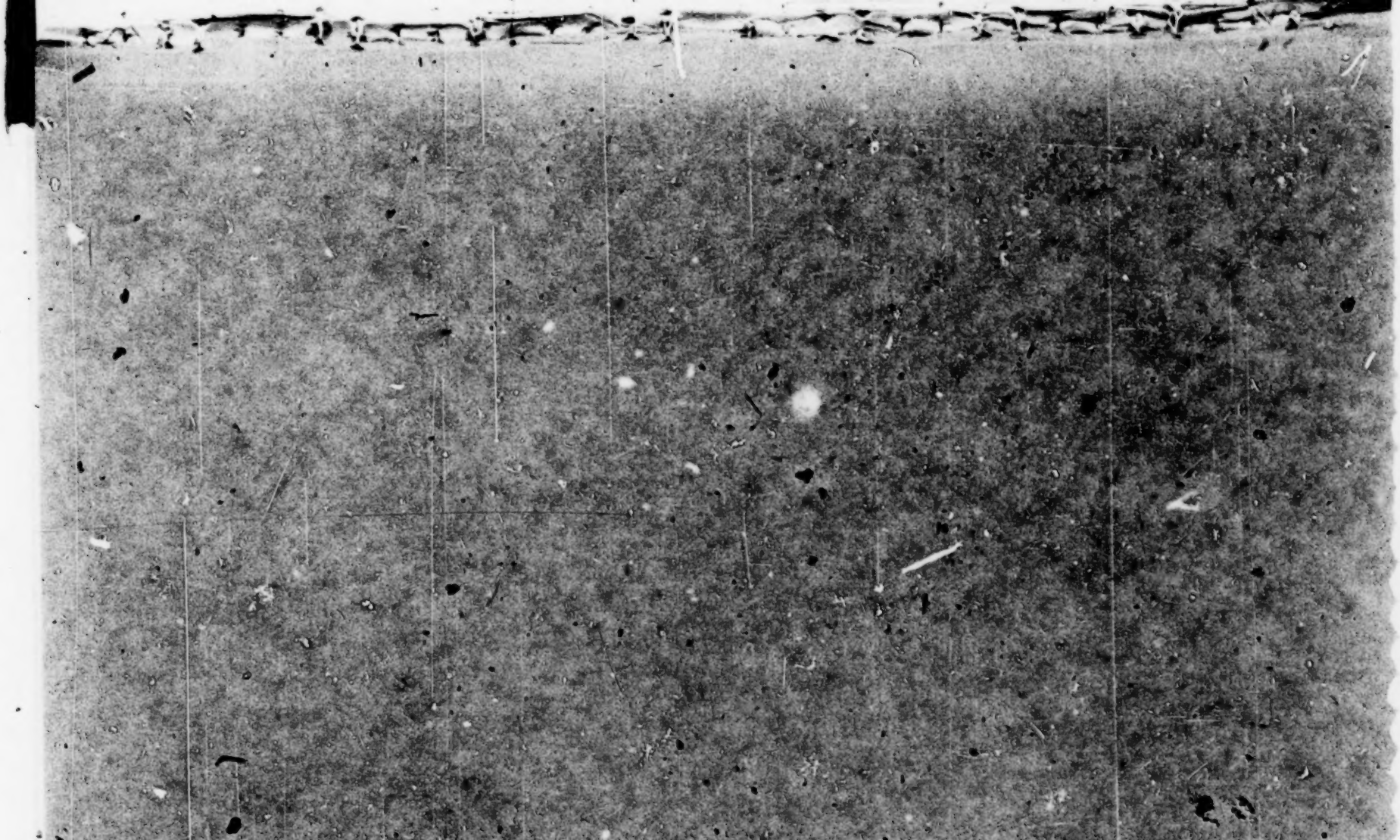
Respectfully submitted,

WILLIAM T. GOSSETT
Attorney for Ford Motor Company

Ford Motor Company
The American Road
Dearborn, Michigan

WILLIAM T. GOSSETT
L. HOMER SURBECK
WRIGHT TISDALE
RICHARD B. DARRAGH
RICHARD A. GIVENS
CECIL SIMS
Of Counsel

Dated: September 19, 1960



APPENDICES

	PAGE
A—Opinion of Supreme Court of Tennessee	1a
B—Opinion on Rehearing of Supreme Court of Tennessee	18a
C—Order of Supreme Court of Tennessee	21a
D—Opinion of Hon. Ned Lentz, Chancellor	22a
E—Tennessee Motor Vehicle Sales Licenses Act	27a
F—Formal Complaint of Cocke County Motor Company	45a
G—Excerpts from Complaint of Appellant in Chancery Court, Davidson County	50a
H—Excerpt from Deposition of Walter J. Cooper, General Sales Manager of Ford Division, Ford Motor Company, December 19, 1958	52a
I—Excerpts from Deposition of William M. Liddon, former Pontiac dealer, May 7, 1959	54a
J—Notice of Hearing Before Motor Vehicle Commission	55a
K—Excerpts from Deposition of Chester R. Pace, Executive Director, Tennessee Motor Vehicle Commission, May 7, 1959	56a
L—Excerpts from Depositions of David P. Whelchel, Executive Vice-President and General Manager, Tennessee Automotive Association	58a
M—Exhibits 1 through 7 to Deposition of David P. Whelchel filed August 5, 1959	60a
N—Exhibit 35 to Deposition of Walter J. Cooper, December 19, 1958	72a
O—Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958	73a
P—Sales Agreement of Cocke County Motor Company	81a
Q—Notice of Appeal	82a

APPENDIX A

Opinion of Supreme Court of Tennessee

FORD MOTOR COMPANY

v.

CHESTER R. PACE, etc., et al.

Supreme Court of Tennessee.

March 11, 1960.

Rehearing Denied May 4, 1960.

BURNETT, Justice.

The original bill in this cause was filed by the Ford Motor Company seeking declaratory judgment as to the validity of Chapter 79 of the Public Acts of 1955 (now codified as Sections 59-1701 through 59-1720, as this Chapter was amended by subsequent Acts), and, if valid, construction of the Act. We take jurisdiction only on the proposition that the constitutionality of the statute "is the sole determinative question in the litigation". (§ 16-408, T. C.A.). If this were not true, the jurisdiction of the case would be in the Court of Appeals.

The chancellor in a memorandum opinion, which is made a part of the record, held that the Act as a whole and each particular part thereof was unconstitutional. From this holding an appeal was seasonably perfected and six of the most able briefs, it has been the writer's pleasure to read, have been filed setting forth the questions to be determined on one side or the other. We have read and re-read the statute as it is codified, supra, the various briefs and all authorities cited therein as well as making some independent

investigation on our own part. After spending many days at this work we have now reached our conclusions and will hereinafter attempt to put them on paper.

The basic argument is that the Act is an invalid exercise of the police power of the State, in that this Motor Vehicle Act serves no public purpose, that such regulations as it provides do not promote the health, safety, moral or general welfare of the public, and consequently it is inimical to the due process clauses of Article 1, Section 8 of the Tennessee Constitution, and the 14th Amendment to the Constitution of the United States. The basic case around which this argument hinges, and upon which one of the briefs is pitched entirely, is our recent opinion of Livesay v. Tennessee Board of Examiners in Watchmaking, Tenn., 322 S.W.2d 209.

In considering the question, whether or not the Legislature has the right to enact such a statute under the police power, we must take into consideration and look at things in the light of the social and economic conditions existing at the present time rather than at the time our Constitution was adopted. Legislative power is not static and helpless but arises to adjust and face new conditions as they appear to affect the people of the State. Of course, the Legislature of the State cannot prohibit an ordinary business but it may, however, regulate the business to promote the health, safety, morals or general welfare of the public. The guarantees of the Constitution imply the absence of arbitrary restraint, but not immunity from reasonable regulations and prohibitions imposed in the interest of the people of the State.

Aside from the record herein we must take judicial knowledge of the tremendous growth of the automobile vehicular industry in the State. All other industries employing any number of people have had to create huge

parking lots for the people to park their cars who come to work. The highways are crowded. The State and Nation are building more, and broader and larger, highways to care for this motor vehicular traffic. The papers and radio are constantly warning people and trying to educate them as to careful driving because of the many, many accidents and deaths that occur by reason of negligence or faulty cars or whatnot. Thus it is, knowing these facts, when we consider the matter in this light, we think that the statement of the Supreme Court of Nebraska in Nelsen v. Tilley, 1939, 137 Neb. 327, 289 N.W. 388, 392, 126 A.L.R. 729, 734, is very appropriate under the discussion now being had. That court said:

> "Motor vehicles, once luxuries, are now necessities. The handling of motor vehicles has become a complex business. The sale of new automobiles is closely tied in with the purchase, trade and sale of used cars. The possibilities of fraud upon the public have correspondingly increased. The elimination of harmful trade practices and dishonest dealings resulting in injury to the purchasing public may have been, and undoubtedly was, a factor in the passage of the act. Many courts have sustained similar legislative enactments."

A fortiori this statement is true today.

From our investigation we have been unable to find any case which holds that it is not within the police power of the State to enact such legislation as that referred to in the quotation last above. See 46 Am.Jur., page 200, Section 5, Sales.

The Court of Appeals of Ohio in Ohio Motor Vehicle Dealers, etc. v. Memphis Auto Sales, 103 Ohio App. 347, 142 N.E. 2d 268, 275, had this to say: "True the sale

of motor vehicles is affected by public interest and laws regulating their sale generally are salutary." And further: "Certainly the legislature has the power to determine that the conduct of an agency engaged in the sale of new motor vehicles is a business affected by the public interest. This fact has been recognized by legislatures and courts throughout the country." Another case holding to this same view is Rebsamen Motor Co. v. Phillips, 1956, 226 Ark. 146, 289 S.W.2d 170, 57 A.L.R.2d 1256. We in this State long ago established the legal principle which is followed in most cases that when the Legislature has enacted a statute, which is apparently for the protection of the public safety, or the public health or the public morals of the people, that the Court will not encroach upon this Act or the right of the Legislature. This Court said in Petition of Carter, 188 Tenn. 677, 222 S.W.2d 11, 12, 13:

> "* * * Furthermore we are not concerned in determining the constitutionality of an Act 'whether it was dictated by a wise or a foolish policy, or whether it will ultimately redound to the public good, or whether it is contrary to natural justice and equity. These are considerations solely for the Legislature.' Motlow v. State, 125 Tenn. 547, 589, 145 S.W. 177, 188, L.R.A.1916 F, 177."

We, too, have said that "Public Policy is the present concept of public welfare or general good. The police power is the attribute of sovereignty by which the public policy is preserved and promoted." State ex rel. Loser v. National Optical Stores Co., 189 Tenn. 433, 225 S.W.2d 263, 269. Thus it is, from what has been said above, we can readily see how the Legislature had it in mind that legislation as that herein, which will hereinafter be more specifically referred to, was well within its police power. It is not at all unreasonable for us to believe that the Legislature had the

purpose in mind in enacting this legislation to protect the public safety, health, and/or public morals of its people. When we thus have determined that the legislation is reasonable, certainly under the Section of our Constitution hereinbefore referred to and the 14th Amendment to the United States Constitution, this legislation is not unconstitutional merely because it is attempting to regulate the motor vehicle or automobile industry, its dealers, salesmen, etc.

The Act in question does not involve watch repairers or makers, house painters, paper hangers, land surveyors, morticians, dancing schools, horse shoers, dry cleaners, layers of drain tile and things of that kind, which have been correctly held beyond the police power of the Legislature for the very apt and fine reasons as set forth in the Livesay case, supra. The question before us though involves the classification of the entire automobile industry, an industry constituting one of the largest segments of our economy This within itself gives some possible reason for the classification and the action of the Legislature in adopting and enacting this police statute. Phillips v. State, 202 Tenn. 402, 304 S.W.2d 614, which was prepared for this Court by Mr. Justice Tomlinson, who also wrote the very excellent opinion in the Livesay case.

It makes no difference what our personal views may be as to the necessity of such legislation as that herein, the fact remains that the Legislature of the State concluded that a reasonable basis existed for its enactment, and, there being some foundation in fact to justify this legislative action, the Court is powerless and it wouldn't be right on our part for us to substitute our judgment for that of the Legislature even if we cared to do so. Thus having concluded that the Legislature had the authority under the police power to regulate the purchase and sale of motor vehicles for the

protection and general welfare of the public, we now come to consider various Sections of the Act and attacks made thereon.

Our reference to the Act in question is to the Act as codified in Sections 59-1701 through 59-1720, Cumulative Supplement to T.C.A.

The first section is a declaration of legislative intent, it being necessary for the public welfare etc., the Legislature under its police power passed this Act to regulate and license motor vehicles, dealers, salesmen, etc. The next section defines the principal terms used in the Act and then follows the creation of the Tennessee Motor Vehicle Commission, which was composed of one member from each of the nine Congressional Districts, plus a Chairman selected from the State at large, all selected and appointed by the Governor from a list furnished by the Tennessee Automotive Association. The Act provides for the qualifications, terms, etc., for these members, their oaths and that the Commission would have an Executive Secretary; also invests the Commission with the power to carry out the purposes of the Act and adopt rules for the same.

The clear intent of the Act is that any person, firm, etc. engaging in the business of manufacturing, distributing, or selling motor vehicles had to be licensed by the Commission, and a latter Section in the Act provides that it is a misdemeanor if anyone attempts to do any one of these things regulated under the Act without first being licensed.

The fees provided are very reasonable: for the distributor one hundred ($100) dollars; for a motor vehicle dealer twenty-five ($25) dollars; for a used car dealer twenty-five ($25) dollars; for a factory representative fifteen ($15) dollars; and for a salesman only three ($3) dollars. Then, of course, there are provisions in the Act penalizing those who do not comply by increasing this.

Section 59-1713, T.C.A., has been in for considerable discussion in the briefs of the appellees. This Section requires that these different people who are licensed and regulated by the Act must specify the location of their business, and, if they change this location, they must notify the Commission, and, if they change to another county, they shall acquire a new license. This Section is obviously a proper regulation, because it is the only way the Commission can keep up with the different parties' licenses.

The controversial Section of the Act as a whole is the following, 59-1714, T.C.A. Under this Section of the Act the Commission is vested with authority to deny application or to revoke or suspend a license for various and sundry reasons as set forth in the Act. Briefly and in summary, these grounds are: unfitness of the applicant, fraud or material misstatement in the application for a license; failure to comply with the Act, and rules and regulations adopted thereunder; flagrant violation of the rules; requiring as a condition of purchase the purchase of special equipment; selling as a new vehicle one which is in fact used; selling as a new vehicle one for which a new car warranty cannot be secured without explaining the fact; having no established place of business; resorting to false or misleading advertising; coercing dealers to accept motor vehicles or parts or accessories not voluntarily ordered, or coercing dealers to order and accept delivery of vehicles with special features not included in the manufacturers list price, or coercing dealers to buy parts etc., only from the manufacturer; refusing to deliver vehicles within sixty (60) days after the dealers order has been received, where the same has been advertised for immediate delivery; inducing or coercing agreements between manufacturers and dealers by threat of cancellation of franchises; unfairly canceling franchises; forcing methods of delivery of new vehicles; and entering

into agreements with dealers who do not have proper servicing facilities.

The Act provides for a hearing by the Commission through its hearing officer with review of the findings of the hearing officer by the Commission, and for a judicial review of the findings of the Commission as provided for other legislative boards under the general law.

In addition to the grounds set forth in the outset of this opinion that the Legislature lacked any reason to enact the Act under its police powers and the Sections of the Constitution therein referred to, the appellees attack the Act on the ground that it violates Article 1, Section 22, and Article 11, Section 8 of our Constitution, in that it is class legislation and designed to create a monopoly. In Nelsen v. Tilley, supra, the Supreme Court of Nebraska struck down the Act there because they were of the opinion that it created a monopoly in persons enfranchised by the manufacturer of motor vehicles. It was said that the selling of new cars would be monopolized by dealers enfranchised by the manufacturers in that the Act was attempting to prohibit citizens from engaging in the business which was free to everybody when it attempted to limit is to one class of people. The Act here in question is not so worded, or does not have this meaning. The Act under consideration covers all dealers, distributors, salesmen, etc., selling new and used automobiles, and it does not attempt to confine its regulatory powers to any one group. This being true, it is not violative of the constitutional provisions or any other that we know of. Spoone v. Mayor & Aldermen of Town of Morristown, 185 Tenn. 454, 461, 206 S.W. 2d 422.

The same reasoning, above, applies to the attack on the Act in that it constitutes a burden on interstate commerce. The Act applies to all alike, whether they are out of the State or in the State, so long as they are doing business here, and

this being true, it is not a burden on interstate commerce. See State v. Helwig, 262 Wis. 299, 54 N.W.2d 907, 908, where cases from many jurisdictions, including that of the Supreme Court of the United States, support this statement.

It is argued very forcibly that the Act is so vague in its terms that it violates procedural due process. The Act creates the Motor Vehicle Commission and defines the policy and those actions which offend that policy. This act vests in this Commission the authority to carry out the administration of that policy. The words of the statute are to be taken in their natural and ordinary meaning. Moto-Pep, Inc. v. McGoldrick, 202 Tenn. 119, 303 S.W.2d 326. And, of course, to those words which are attacked, we must ascribe the meaning to be ascertained and determined from the context of the Act so as to give them the purpose which was the intention expressed in the Act.

A great many other states have enacted laws very similar to the Act here under question. Some of these laws have been on the statute books of other states for many years, and many of them are indeed very similar to that here under attack and some are identical. The States of Wisconsin, Colorado, Virginia, Florida, Oklahoma, South Dakota, Michigan, Ohio, Mississippi and Arkansas have related Acts. The Arkansas Act (Acts 1955, No. 182) was striken down in Rebsamen Motor Co. v. Phillips, supra, because the statute franchised dealers in new and unused motor vehicles and their salesmen while the unfranchised competitors dealing in new and unused cars were not regulated. Obviously, the Act was unconstitutional for that reason, but that has no application to the Act here in question because it deals with all alike.

The Wisconsin statute (W.S.A. 218.01) was upheld in the case of Kuhl Motor Co. v. Ford Motor Co., 270 Wis. 488, 71 N.W. 2d 420, 55 A.L.R.2d 467. The appellees at-

tempt to minimize the holding in this Wisconsin case herein, because what was the majority opinion in the first instance turned out on petition to rehear to be the minority opinion, and the dissenting opinion in the first instance was the majority opinion. The dissenting opinion upholds the provisions of the Act in general and legislation of this kind. This case likewise upheld the proposition that it was well within the legislative prerogative, under their police powers (their provisions of the Constitution being almost identical with ours), to enact such legislation. Even the dissent does not question this fact. It questions primarily certain provisions of the Act which it is said, in the dissent, would not give the Ford Motor Company rights under the due process laws.

Louisiana has an Act very similar to that here under discussion. (LSA-R.S. 32:1251 et seq.) This Act was upheld by the court of last resort of Louisiana in Louisiana Motor Vehicle Commission v. Wheeling Frenchman, et al., which is the latest case decided on the subject, May, 1958, and it is reported in 235 La. 332, 103 So.2d 464, 469. Among other things the court observed in that opinion "that the production, transportation and marketing of automobiles is unquestionably a proper subject for regulation by the Legislature under its police power."

The related acts have been upheld in at least two other cases, that of Willys Motors, Inc. v. Northwest Kaiser-Willys, Inc., D.C.Minn., 142 F.Supp. 469, M.S.A. § 168.27, and Buggs v. Ford Motor Co., 7 Cir., 113 F.2d 618 (W.S.A. 218.01); while the Colorado Act (C.R.S. '53, 13-11-1 et seq.) has been held unconstitutional by a three judge Federal Court in the case of General Motors Corp. v. Blevins, D.C.Colo., 144 F. Supp. 381.

In the last case cited, the Blevins case, the Court therein made a number of relatively diverse holdings about different things. The case was decided by the United States Court

without the benefit of having the court of last resort of Colorado pass on the constitutionality of the State Act. Apparently the case, as far as General Motors was concerned, was not met with much opposition. The opinion in this case makes reference to other cases cited to the contrary merely by brushing them off by stating that other facts were involved in those cases. The opinion did not attempt to distingush them otherwise. As far as we are concerned, this opinion obviously does not have the persuasive power the case from Louisiana and other cases, we have referred to, do have in our consideration of the question here involved.

Much argument is contained in the various briefs, supporting the position of the appellee, that the language of the Act violates due process because of vagueness and uncertainty of its terms. In discussing this question the briefs argue that the Act does not provide or furnish any ascertainable standards upon which the Commission would act, and criticize the terms "the act of coercing", "threatening to cancel any franchise", "as unfairly", "without due regard to the equities of said dealer", and "without just provocation", and such statements as are in Section 59-1714. We have carefully, as we have said before, read and re-read some two or three times the specific provisions of this Act and it seems to us that the application of these terms objected to can be fairly administered by the Commission in applying the ordinary meaning of such terms to them. The authors of 50 Am.Jur., page 489, make this statement:

> "* * * A statute is not necessarily void merely because it is vague, indefinite, or uncertain, or contains terms not susceptible of exact meaning, or is stated in general terms, or prescribes a general course of conduct, or does not prescribe boundaries, or is imperfect in its details, or contains errors or omissions, or because the intention of the legislature might have

> been expressed in plainer terms, and questions may arise as to its applicability, and opinions may differ in respect of what falls within its terms, or because the statute is difficult to execute."

Of course, to this statement there are numerous respectable authorities cited from various jurisdictions in the country.

A rather vicious attack is made upon the Section of the Act (59-1703) which makes the Commission consist solely of dealers who are selected by the Governor from a list submitted by the Tennessee Automotive Association. The argument is, and, at least one of the briefs makes abrupt apologies to the present members of the Board for making this attack as not reflecting on them particularly, that by the very nature of a Board thus made up, the Board is biased and partial. It is said such a nonjudicial body which exercises at least quasi-judicial functions should not be allowed. We think the attack on this Section of the Act is entirely unjustified. As far as we know, our investigation certainly shows that practically all the regulatory boards which cover most everything today in the State are made up of members of the profession which that board governs. The reason for this is perfectly obvious.

The Act now being questioned, to our minds, is closely related to the regulatory act regulating real estate agents and salesmen. They have a board which regulates, licenses, etc., as this one does, made up of people with knowledge of their profession. This Court in Prosterman v. Tennessee State Board of Dental Examiners, 168 Tenn. 16, 73 S.W.2d 687, held that identical provisions as to the dentists being members of these boards (Code 1932, § 6941 et seq.), as the automobile people are here, was not violative of Article 1, Section 8 of our Constitution, that no man shall be

seized or deprived of property but by judgment of his peers, etc.; that the statute likewise did not violate Article 1, Section 17 of the Constitution in that the courts should be open to every person injured; and that it did not violate Article 6, Section 11 of our Constitution, providing that no judge should preside over a trial or a cause or event in which he may be interested. The same reasoning applies to this board as applied in the Prosterman case. We could extend the reasons at length but we think they are obvious and it is not necessary to do so.

It is assigned as error and argued at length that the Legislature has conferred upon this board legislative power which of course it cannot do. We do not think so. The Legislature here has conferred upon this agency the right to enforce and administer this particular statute, and the statute in effect gives direction to such agency so that it may carry out the purpose of the Legislature as shown by the Act. This Court in Large v. City of Elizabethton, 185 Tenn. 156, 203 S.W.2d 907, pointed out that the Legislature may confer jurisdiction upon a board in the administration of a statute, which the Legislature enacts and vests in that board the power and authority to adjudicate all matters arising under the statute. There is nothing unconstitutional or wrong in what was done in this particular case. It has long been settled in this State that under the police power the Legislature may extend to these boards or commissions the right to administer regulatory laws. This Court long before any of the present members were on it in Rushing v. Tennessee Crime Commission, 173 Tenn. 308, 117 S.W. 2d 4, 7, said this:

> "No restraint is imposed by the Constitution upon the power of the Legislature to create boards and commissions as the instrumentalities of government nor is there any restraint upon the power to

> provide means through which such boards and commissions may accomplish the purpose for which they are created."

It is argued very ably on appellee's side of this lawsuit that there is no procedure provided in the statute for hearings. The statute provides that there may be a hearing officer and, then without saying how it gets to the board, the statute says what the board may do about it. It is argued, of course, that there is no connection between the two and that there is no way provided to get the matter from the hearing officer to the board. The hearing officer makes up the record and passes it to the commission with his recommendation. The statute, of course, does not have to say in so many words that there will be exceptions. This follows as a matter of course.

It is argued on behalf of the appellees that there is no procedure provided for a hearing provided a license is not granted or taken away or whatnot herein. The Act provides for a hearing officer who may hear these things and make certain findings and conclusions thereon. The Act does not in so many words say how then it gets from the hearing officer to the commission, but it does provide that the commission may hear this and what they shall do, etc. The leaving out of these things in the Act does not void the Act, because it must be assumed that if there are any exceptions to the hearing officer's findings then it is on these exceptions that the commission will act. Clearly the whole import of the Act is that this is true. There can be no other conclusion from it. In Richardson v. Reese, 165 Tenn. 661, 57 S.W.2d 797, this Court held that the mere naked provision for a hearing implies a hearing with all requirements of due process of law. The Act provides that after the commission has acted this decision of the commission is subject to review

by the Circuit Court of Davidson County (under Section 27-901 et seq., T.C.A.). In other words, the same Section as is applicable to other regulatory boards. Such an Act is not unconstitutional when it does allow the matter to be heard, findings made, etc., and then to be heard in court. This is true, that is, that there is nothing unconstitutional about it when an appeal to the court is provided. Nelsen v. Tilley, supra, and 46 Am.Jur., supra.

Much argument is leveled at the provision of the Act, which attempts under the State's police power in enacting the Act, to protect automobile dealers against unfair dealing on the part of automobile manufacturers. This Court in Harbison v. Knoxville Iron Co., 103 Tenn. 421, 53 S.W. 955, 960, 56 L.R.A. 316, sixty years ago enunciated a principle of law (following other authorities) which is clearly applicable to the present Act. This is one of the best opinions we have read, ancient or modern, on the due process clause of the Federal Constitution and Article 1, Section 8 of our Constitution. Among other things, the Court in the Harbison case said:

> "* * * The legislature, as it thought, found the employé at a disadvantage in this respect, and by this enactment undertook to place him and the employer more nearly upon an equality. This alone commends the act and entitles it to a place on the statute book as a valid police regulation."

Of course, the argument against the Act in the Harbison case is the same as the argument here, that it violated the right to contract as they pleased. This contention was answered to the contrary to those making the argument, and on the basis of the quotation last above the Act and this particular part of it was affirmed. The Court quoted from Holder v. Hardy, 169 U.S. 366, 391, 18 S.Ct. 383, 42 L.Ed.

780, in answer to this argument, and this quotation is equally applicable today in the present suit.

This identical provision was approved in the Wisconsin case of Kuhl Motor Co. v. Ford Motor Co., supra, and in the opinion that case quotes from Ford Motor Co. v. United States, 335 U.S. 303, 323, 69 S.Ct. 93, 103, 93 L.Ed. 24, among other things, this: "The dealers are thus economic dependents of the company whose cars they sell."

We are satisfied after reading the matter and studying it for days that there is no unconstitutionality in this provision.

Of course, as we said in the outset these things do not express our personal views, but as we see it, from our duty in interpreting an Act of the Legislature, giving them the legal rights and duties that are theirs as set forth in Cosmopolitan Life Ins. Co. v. Northington, 201 Tenn. 541, 300 S.W.2d 911, the Legislature has determined that these things are necessary. We think that they clearly come within the police power and are entirely different from situations treated of in the Livesay case, supra.

We do not intend to encroach upon the duties and prerogatives of the legislative branch, intentionally. There has been entirely too much of this in recent times. Our Constitution, Article 2, Section 2, provides that no persons belonging to one department shall exercise power properly belonging to the other; Article 2, Section 3 provides that the legislative authority is vested in the General Assembly. We to our utmost satisfaction have determined, for reasons hereinabove, that the enactment here was in the legislative authority, under the police powers, and it is not arbitrary or capricious. Thus it is that we must sustain the legislation.

The last section of the Act contains a severability clause. In other words, if there is any section or sentence or clause or phrase or whatnot in the Act that is unconstitutional it

is provided in this Section that such will not affect the validity of the remaining portions of the Act. Of course, the rule is, that when the Legislature so provides if a portion is constitutional and it can be separated from the other portions of the Act, and it further appears that the unconstitutional part did not constitute such an inducement to the passage of the other parts of the Act, and it would have been passed without it, then part of it may be rejected and part of it upheld.

We have concluded after very careful study that subdivision (2) of subsection (h) of Section 59-1714, T.C.A., is arbitrary and capricious and cannot be used for a ground for denial, suspension or revocation of license. We have likewise concluded that subsection (5) under (h) of the same Code Section is not a constitutional enactment. It does not in any way, as we see it, pertain to the economy, economic conditions of the parties or aid the welfare or whatnot in any particular. The first excluded subdivision, if carried to its logical conclusion, could merely be salesmanship. If in this clause the word "inducement" had been left out and had left merely the word "coercion" it would have had an entirely different meaning and might have been all right. Since inducement clearly means the art of selling, etc., we think that these two sections of the Act should be stricken. It is perfectly obvious that the Act is entire and a full act and the part we have stricken does not affect the main purpose of the Act or any portion of it at all. Therefore, we uphold the constitutionality of the Act.

The result is that the decree of the Chancellor will be reversed and the cause remanded to that court for further proceedings. Accrued costs are adjudged against the appellee, Ford Motor Company.

PREWITT, C. J., not participating.

APPENDIX B

On Petition to Rehear

BURNETT, Justice

There has been presented to us a petition to rehear herein by the Ford Motor Company, which is in effect rather undignified and pedagogical. Regardless of this fact, we have given the petition very careful and thorough consideration.

The petition basically is filed because our decision "makes it imperative as a condition for review by the Supreme Court of the United States, for the Court to either act or refuse to act upon the validity of the legislation under the Constitution of the United States, both with reference to the previous insistence and contentions by your Petitioner * * *"

The insistences then made are that the Act is void because it is contrary to the Fourteenth Amendment of the United States Constitution; that as construed and applied by this Court it is void and contrary to the Constitution of the United States and more particularly to Article I, Section 10 of the Constitution of the United States, in that as we have construed the Act it constitutes a bill of attainder, is an ex post facto law, and a law which impairs the obligations of contracts, entered into and existing prior to the passage of the legislation. We are unable to perceive these infirmities.

We in the original opinion have amply responded to the insistence that the Act is void because contrary to the Fourteenth Amendment of the United States Constitution. There are no new authorities cited, and the petition merely cites cases and refers to the original brief which we considered very thoroughly by reading at least twice.

Appendix B—On Petition to Rehear

The other insistence is that it violates Article I, Section 10, of the Constitution of the United States in that it "impairs the obligations of contracts and is an ex post facto law * * *" In Willys Motors, Inc. v. Northwest Kaiser-Willys, Inc., cited in our original opinion, that court held that a Minnesota statute making it unlawful for any motor vehicle manufacturer to cancel the franchise of retail dealer without just cause was a valid exercise of the state police power and was not repugnant to Article I, Section 10, of the United States Constitution. That court cited in support of its holding Manigault v. Springs, 199 U.S. 473, 26 S.Ct. 127, 130, 50 L.Ed. 274, and a host of other cases. Insofar as it is applicable (we consider it an absolute answer to the question here made) the court has this to say:

> "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which, in its various ramifications, is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contracts between individuals. Familiar instances of this are where parties enter into contracts, perfectly lawful at the time, to sell liquor, operate a brewery or distillery, or carry on a lottery, all of which are subject to impairment by a change of policy on the part of the state, prohibiting the establishment or continuance of such traffic; in other words, that parties, by entering into contracts, may not estop the legislature from enacting laws intended for the public good."

Appendix B—On Petition to Rehear

In our original opinion for reasons which we think are valid, we held that the enactment of the statute herein was within the power of the Legislature under its police power to enact. We cited various cases in support of our holding. There were none so far as we could find, or have been cited by able counsel, holding that it is not within the police power of the Legislature to pass such legislation as this.

We have carefully considered the entire matter and for the reasons expressed must overrule the petition to rehear.

APPENDIX C

Order of Supreme Court of Tennessee

FILED
March 15 1960

FORD MOTOR COMPANY

Vs. 37455 Davidson Equity

CHESTER R. PACE, etc. et al Reversed and Remanded.

This cause coming on to be heard upon a transcript of the record from the Chancery Court of Davidson County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in the decree of the Chancellor there is error.

It is therefore ordered and decreed by the Court that the decree of the Chancellor be reversed and that this cause be remanded to the Chancery Court of Davidson County for further proceedings in accordance with the Court's opinion, a certified copy of which will accompany the procedendo on the remand; and for the collection of the cost of the Court below; for all of which let procedendo issue.

The cost of the appeal will be paid by the Ford Motor Company, principal; and F. A. Berry and Cecil Sims, sureties; for which execution may issue from this Court. 3/11/60.

APPENDIX D

Opinion of Hon. Ned Lentz, Chancellor

FORD MOTOR COMPANY	IN THE CHANCERY COURT,
vs. No. 80109	PART ONE,
CHESTER R. PACE	AT NASHVILLE.

MEMORANDUM

This Court is of the opinion that Chapter 79, Public Acts of 1955 is unconstitutional. Complainant's bill is sustained, cross-complainant's cross-bill is dismissed, and cross-complainant is taxed with the costs.

The above opinion is based upon the conclusion that the act is an invalid exercise of the police power of the State, being in violation of Article I, Section 8, and also Article II, Section 8 of the Constitution of the State of Tennessee. The act imposes unreasonable and unnecessary restrictions upon common, lawful occupations; the act does not contain adequate standards to guide and control the Board created under the act.

Our Supreme Court has ruled in *Phillips vs. State*, 304 S.W. (2d) 614 that:

> "(3) This police power of the State embraces all matters reasonably 'deemed necessary or expedient for the safety, health, morals, comfort and welfare of its people.' Darbison v. Knoxville Iron Co., 103 Tenn. 421, [illegible] 442, 53 S.W. 955, 960, 56 L.R.A. 316, including the domestic peace, the private happiness or public welfare of the people.' Lonas v. State, 50 Tenn. 287, 310. It is not limited to regulations 'in the interest of public health, safety and morals.' Nashville, C. & St. L. Railroad v. Walters, 294 U. S. 405, 429, 55 S. Ct. 486, 495, 79 L. Ed. 949, 963."

Appendix D—Opinion of Hon. Ned Lentz, Chancellor

The question then presented is whether or not the act is necessary or expedient and has a real or substantial relationship to the object sought to be obtained.

Certainly this act bears no conceivable relationship to the public morals, domestic peace, private happiness, comfort, or the public health. This then leaves the question as to whether or not the act bears a reasonable relationship to the public welfare and safety.

The contention is made by the defendants that the act is in the interest of the public safety in that without the act improperly serviced cars would be sold to the public, thereby endangering the public. However, the act in no way regulates or controls the servicing of automobiles. There is no requirement in the act that the dealer shall service or inspect, no authority given the Commission to require that the dealer service or inspect, and no power given to the commission to revoke a dealer's license for failure to service or inspect a new vehicle. A licensed dealer is not required by the act to be a mechanic, or even to employ a mechanic. Thus, it could only be by a far stretch of the imagination to say that the act had any reasonable relationship to public safety.

Where does the public welfare fit into the picture? The act licenses and then regulates motor vehicle manufacturers, distributors, dealers, salesmen and their representatives. After the licensing, the act regulates the location of the business and its salesmen. The act then attempts to regulate the manufacturer, the dealers and the salesmen in their own business.

The Court is of the opinion that the protection of the public health, safety, welfare or morals of the people of Tennessee do not require the licensing, regulation, or interference with the said automotive business. This regulatory board is vested with such power that it would control the automotive business in the entire State of Tennessee. With

its power to revoke it is not inconceivable that the board could revoke the license of each and every automobile manufacturer in the State of Tennessee. It appears to this Court that this great power to revoke or suspend a manufacturer's license could do irreparable damage to many, if not to all dealers, and to the public. If complainant's license should be revoked or suspended on the complaint of the defendant, damage could be done to the owners of Ford products and all Ford dealers in this State. Even a short suspension could put many dealers completely out of business, and thousands of Ford product owners would be without service and parts for their Ford products. Limiting the right of manufacturers to weed out inefficient dealers and those who fail to offer proper service to customers could certainly harm the public. Curtailing the right of manufacturers to require dealers to maintain a proper repair and service department in order to give satisfactory service will harm, not benefit the public. The denial or revocation of the license of a manufacturer for whatever reason would have the result of completely shutting off the opportunity of the public to buy its motor vehicles in the State and of preventing the establishments of plants and branches in Tennessee, —all of which would be to the great disadvantage of the general public.

The act (T. C. A. 59-1701) contains the following:

LEGISLATIVE FINDINGS AND DECLARATION.--

> "The legislature finds and declares that the distribution and sale of motor vehicles in the State of Tennessee vitally affects the general economy of the state and the public interest and the public welfare, and in the exercise of its police power it is necessary to regulate and to license motor vehicle manufacturers, distributors, dealers, salesmen, and their representatives doing business in Tennessee *in order*

> *to prevent frauds, impositions and other abuses upon its citizens.*" (Emphasis supplied.)

Thus the stated purpose of the act was to prevent frauds and abuses upon the public. If this be the true purpose, the act still cannot stand. The opinion of Justice Tomlinson in the case of *Livesay vs. Tennessee Board of Examiners in Watchmaking* (322 S.W.2d 209) contains the following statement:

> "And, if [redacted]e opportunity for a dishonest person in pursuit of a private occupation to defraud his customer is to become a justification for the regulation under the police power rule of an otherwise private occupation, then the Legislature may well regulate every conceivable business, and 'the claim of the police power rule would . . . become . . . a delusive name for the supreme sovereignty of the state to be exercised free from constitutional restraint.' State v. Greeson, 174 Tenn., 178, 191, 124 2d 253, 258."

This Court further feels that the act arbitrarily interferes with and imposes unreasonable and unnecessary restrictions upon a lawful and common occupation. The Court is of the opinion that automobile manufacturers and dealers are engaged in a common vocation in which each has a constitutional right to engage. As stated by Justice Tomlinson in the Livesay case, supra:

> "(3) Our statute requires of a would-be repairer of watches such general and technical education 'as the board shall deem necessary'. He must likewise satisfy it that he is a person of good character. He must pass such examination on the subject as the board may give, and likewise give a physical demonstration of his talents as a watch repairer. These requirements would have the effect of preventing many would-be repairers of watches from entering that old and 'innocuous' occupation. Yet, this

> Court is entirely unable to imagine how such requirements at all promote the general welfare or protect the public morals, health or safety, or have any real tendency to those ends. Such results not appearing, in so far as this Court can see, it follows that its plain duty is to adjudge this statute unconstitutional because it 'may deny some citizens their inherent right to earn their livelihood in a private field of work, thus depriving them of a valuable property right without due process of law', quoting from the Oklahoma case of Whetsel v. Wood, supra (207 Okl. 193, 248 P. 2d 615)." See Campbell v. McIntyre, 165 Tenn. 47.

The act violates due process clause because of vagueness and uncertainty of its terms.

The provisions of Section 5 (h) (4), (T.C.A. 59-1714) specifying the grounds upon which a manufacturer's license may be revoked, furnish no ascertainable standards. The terms, "the act of coercing", "threatening to cancel any franchise," "as unfairly," "without due regard to the equities of said dealer and without just provocation" cancel the franchise or refuse to renew a franchise, are all indefinite and vague. The act is also vague and uncertain as to the statutory qualifications for a license, as there are no standards for determining who is and who is not entitled to a license. The Commission is not given any guidepost, and the act may then become whatever the members of the Commission decide it should mean.

The Court in view of the above does not consider it necessary to pass upon other questions raised in this cause.

Decree accordingly.

.....

NED LENTZ, CHANCELLOR

This October , 1959.

APPENDIX E

Tennessee Motor Vehicle Sales Licenses Act

[From Tennessee Code Annotated]

CHAPTER 17—MOTOR VEHICLE SALES LICENSES

59-1701. Legislative findings and declaration.—The legislature finds and declares that the distribution and sale of motor vehicles in the state of Tennessee vitally affects the general economy of the state and the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and to license motor vehicle manufacturers, distributors, dealers, salesmen, and their representatives doing business in Tennessee in order to prevent frauds, impositions and other abuses upon its citizens. [Acts 1955, ch. 79, § 1.]

59-1702. Definitions.—The following words, terms, and phrases, when used in this chapter shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) "Motor vehicle" means any motor driven vehicle of the type and kind required to be registered and titled under chapters 1 to 6, inclusive, of this title.

(b) "Motor vehicle dealer" means any person, firm, association, corporation, or trust not excluded by subsection (c) of this section, engaged in the business of selling, soliciting, or advertising the sale of motor vehicles.

(c) The term "motor vehicle dealer" does not include the following:

(1) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court; or

(2) Public officers while performing or in the operation of their duties; or

(3) Employees of persons, corporations, or associations enumerated in paragraph (1) of this subsection when engaged in the specific performance of their duties as such employees.

(d) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer whose duties include the selling or offering for sale of motor vehicles.

(e) "Commission" means the Tennessee motor vehicle commission created by this chapter.

(f) "Manufacturer" means any person, firm, association, corporation, or trust resident or nonresident who manufactures or assembles new and unused motor vehicles.

(g) "Distributor" or "wholesaler" means any person, firm, association, corporation, or trust, resident or nonresident who in whole or in part sells or distributes any new and unused motor vehicles to motor vehicle dealers or who maintains distributor representatives.

(h) "Factory branch" means a branch office maintained by a person, firm, association, corporation, or trust who manufactures or assembles motor vehicles for the sale of motor vehicles to distributors or for the sale of motor vehicles to motor vehicle dealers or for directing or supervising in whole or in part its representatives and shall further include all sales promotion organizations whether the same be a person, firm or corporation which is engaged in promoting the sale of new and unused motor vehicles in Tennessee of a particular brand or make to motor vehicle dealers.

(i) "Distributor branch" means a branch office similarly maintained by a distributor or wholesaler for the same purpose a factory branch is maintained.

(j) "Factory representative" means a representative employed by a person, firm, association, corporation, or trust who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of his, its, or their motor vehicles or for supervising or contacting his, its, or their dealers or prospective dealers.

(k) "Distributor representative" means a representative similarly employed by a distributor, distributor branch or wholesaler.

(l) "Automobile auction" means any person, firm, association, corporation, or trust resident or nonresident who is engaged in the business and/or providing facilities for the purpose of selling, soliciting or advertising the sale of motor vehicles and/or providing a place of business or facilities for the exchange of motor vehicles on the wholesale level by and between duly licensed motor vehicle dealers and/or consignment of motor vehicles for the purpose of sale by any government or political subdivision, financing institutions and leasing firms, and/or acting as an agent for the purchaser or seller of motor vehicles. [Acts 1955, ch. 79, § 2; 1957, ch. 56, §§ 1-3; 1959, ch. 25, §§ 1, 2.]

59-1703. Motor vehicle commission—Appointment and qualifications of members.—There is hereby created the Tennessee motor vehicle commission to be composed of one (1) member from each of the nine (9) congressional districts of the state, and a chairman to be selected from

the state at large, all to be selected and appointed by the governor of the state of Tennessee from such list of properly qualified candidates, not less than twenty (20) in number and including at least two (2) from each congressional district, as may be furnished to the governor by the Tennessee automotive association. Each of the commissioners thus appointed shall, at the time of their appointment, be a resident in good faith of the congressional district from which he is appointed, except the chairman, who shall be a resident in good faith of the state of Tennessee; and each shall be of good moral character, and each shall have been actually engaged in the manufacture, distribution, or sale of motor vehicles in the state of Tennessee for not less than five (5) consecutive years next preceding such appointment, and each must have the necessary qualifications for a due and proper license under this chapter, and be a holder of such a license at all times while a member of said commission. Being engaged in more than one (1) of such pursuits shall not disqualify a person otherwise qualified from serving on said commission. [Acts 1955, ch. 79, § 3.]

59-1704. Terms of members—Oath of office.—The term of the chairman shall be coterminus with that of the governor, making the appointment and until a successor to the chairman is appointed and qualifies. The terms of office of the members first appointed to the commission shall be as follows: The members appointed from the first, fourth, and seventh congressional districts shall serve until June 30, 1956; the members appointed from the second, fifth, and eighth congressional districts shall serve until June 30, 1958; and the members appointed from the third, sixth, and ninth congressional districts shall serve until June 30, 1960, provided, however, that each member shall serve until his successor is appointed and qualifies. There-

after, the term of office of each member of the commission other than the chairman shall be for six (6) years. In the event of the death, resignation or removal of any person serving on said commission, the vacancy shall be filled by appointment, as aforesaid, for the unexpired portion of the term. The commission shall meet at Nashville and complete its organization immediately after the entire membership thereof has been appointed and is qualified. The chairman and each member of the commission shall take and subscribe to the oath of office required of public officers. [Acts 1955, ch. 79, § 3; 1957, ch. 56, § 4.]

59-1705. Compensation of members—Expenses.—The chairman and members of said commission shall receive ten dollars ($10.00) per diem for each and every day actually and necessarily spent in attending the meetings of the commission and shall be reimbursed for subsistence and traveling expenses necessarily incurred in the performance of their duties hereunder; provided that such per diem payments shall not exceed the sum of two hundred dollars ($200) per annum to any one (1) person. [Acts 1955, ch. 79, § 3.]

59-1706. Executive director—Appointment—Bond—Office—Seal.—The commission shall appoint a qualified person to serve as executive director thereof, to serve at the pleasure of the commission, and shall define and prescribe his duties. The executive director shall be in charge of the commission's office and shall devote such time to the duties thereof as may be necessary and before entering upon such duties he shall take and subscribe to the oath of office and execute bond to the state of Tennessee in the principal sum of ten thousand dollars ($10,000) conditioned upon faithful performance of duties and accounting for all funds

coming into his hands by virtue of his office. The salary of the executive director shall be fixed by the commission with the approval of the governor but shall in no event exceed the amount of the fees received by the commission and paid into the treasury as provided in § 59-1708 hereof. Said commission shall employ clerical help and incur such expenses as may be necessary for the proper discharge of its duties under this chapter. The commission shall maintain its office and transact its business in Nashville, and it is authorized to adopt and use a seal. [Acts 1955, ch. 79, § 3; 1959, ch. 25, § 3.]

59-1707. Powers of commission—Regulations—Enforcement.—The commission is hereby vested with the powers and duties necessary and proper to enable it to fully and effectively carry out the provisions and objectives of this chapter and is hereby authorized and empowered to make and enforce all reasonable rules and regulations and to adopt and prescribe all forms necessary to accomplish said purpose and the enumeration of any power or authority shall not be construed to deny, impair, disparage, or limit any others necessary to the attainment thereof. A copy of all rules and regulations adopted by the commission shall be approved by the attorney-general and filed and recorded in the office of the secretary of state, as required by law and the same may be amended, modified, or repealed from time to time. [Acts 1955, ch. 79, § 3.]

59-1708. Disposition of fees and charges.—All fees and charges, under the provisions of this chapter, shall be collected and received by the executive secretary of the commission and by him paid into the treasury of the state. [Acts 1955, ch. 79, § 3.]

Appendix E—Tennessee Motor Vehicle Sales Licenses Act

59-1709. Activities for which license required.—(a) It shall be unlawful and constitute a misdemeanor for any person, firm, association, corporation or trust to engage in business as, or serve in the capacity of, or act as a manufacturer, distributor, or wholesaler, factory branch or distributor branch, factory representative or distributor representative in this state without first obtaining a license therefor as provided in §§ 59-1710—59-1713.

(b) It shall be unlawful and constitute a misdemeanor for any person, firm, association, corporation or trust to engage in business as, or act as a motor vehicle dealer in this state without first obtaining a license therefor as provided in §§ 59-1710—59-1713.

(c) It shall be unlawful and constitute a misdemeanor for any person to engage in business as, serve in the capacity of, or act as a motor vehicle salesman in this state without first obtaining a license therefor as provided in §§ 59-1710—59-1713.

(d) On or after July 1, 1959, it shall be unlawful and constitute a misdemeanor for any person, firm, association, corporation, or trust to engage in business as, or act as an automobile auction in this state without first obtaining a license therefor as provided in this section.

(e) All licenses issued under the provisions of this chapter to automobile auctions shall expire on June 30th following the date of issuance.

(f) For each automobile auction selling motor vehicles and/or acting as an agent, one hundred dollars ($100).

(g) The license issued to each automobile auction shall specify the office location or branch thereof, and the Commission shall cause each automobile auction or branch thereof to post bond in the amount of twenty-five thousand dollars ($25,000).

The commission shall require all automobile auctions to file such bonds with the executive director upon application for license, and such bonds shall meet specifications as may be required by the commission. [Acts 1955, ch. 79, § 4; 1959, ch. 25, § 4.]

59-1710. Additional licenses required — Requirements as to compensation, employment and licensing of salesmen—Penalty for violation.—(1) Any person, firm, association, corporation, or trust engaging, acting, or serving in more than one of the capacities for which a license is required under § 59-1709 or having more than one place where such business is carried on or conducted shall be required to obtain and hold a current license for each thereof, in which he, it or they are engaged.

(2) It shall be unlawful and constitute a misdemeanor for any person, firm, association, corporation or trust and/or motor vehicle dealer to engage, hire, or contract for the services of any person for the purpose of selling motor vehicles and/or acting in the capacity of a motor vehicle salesman, without first determining that such person is duly licensed as a motor vehicle salesman as provided for in this section.

(3) It shall be unlawful and constitute a misdemeanor for any person, firm, association, corporation, or trust and/or motor vehicle dealer to give, pay or in any other manner compensate any person or persons for services rendered as a motor vehicle salesman, without first engaging and/or employing such person or persons in the capacity of a motor vehicle salesman.

(4) It shall be unlawful and constitute a misdemeanor for any duly licensed motor vehicle salesman to sell, attempt

or offer to sell for compensation any motor vehicle of any type or kind, for any person, firm, association, corporation, or trust and/or motor vehicle dealer, unless otherwise being duly employed in the capacity of a motor vehicle salesman, for such person, firm, association, corporation, or trust and/or motor vehicle dealer, offering or holders of such motor vehicles for sale. [Acts 1955, ch. 79, § 4; 1959, ch. 25, § 5.]

59-1711. Application for license—Expiration.— Applications for licenses required to be obtained under the provisions of this chapter shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the commission and furnished such applicants and shall contain such information as the commission deems necessary as to enable it to fully determine the qualifications and eligibility of the several applicants to receive the license or licenses applied for.

The commission shall require on such application or otherwise, information relating to the applicant's financial standing, the applicant's business integrity, whether the applicant has an established place of business and is primarily engaged in the pursuit, avocation or business for which a license or licenses is applied, and such other pertinent information consistent with the safeguarding of the public interest and public welfare.

Further, all applications for a license as a motor vehicle dealer shall show upon its face whether the applicant proposes to sell only used motor vehicles or both new and used motor vehicles. Provided, however, that nothing herein shall be construed to make it unlawful for any person to engage in business as a salesman on a part time basis.

All such applications for license or licenses shall be accompanied by the appropriate fee or fees therefor in ac-

cordance with the schedule thereof set out in § 59-1712. In the event any such application is denied, and the license applied for is not issued, seventy-five per cent (75%) of the license fee shall be returned to the applicant.

All licenses issued under the provisions of this chapter to manufacturers, distributors, or wholesalers, factory branches, distributor branches, factory representatives, and distributor representatives shall expire on June 30th following the date of issuance. All licenses issued under the provisions of this chapter to motor vehicle dealers shall expire on August 31st following the date of issuance. All licenses issued under the provisions of this chapter to motor vehicle salesmen shall expire on December 31 following the date of issuance.

The Tennessee motor vehicle commission shall issue a certificate of license to an applicant for the sale of motor vehicles at retail only if he owns or leases and/or rents a permanent, properly identified location wherein there are facilities to display and repair functional and nonfunctional parts of automobiles and where replacement parts, repair tools and equipment to service automobiles are kept, and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business, and such place shall not be construed to mean residence, tents or temporary stands.

An approved service contract with an established repair shop having the above repair facilities and the requirement for replacement parts, repair tools and equipment to service automobiles shall serve in lieu of an applicant's repair facilities and the requirement for replacement parts, repair tools and equipment to service automobiles, provided that such service connection is within reasonable distance from the applicant's place of business; and provided further, that such service connection guarantees in writing the making

of the repairs or replacements ordered by the duly licensed dealer. [Acts 1955, ch. 79, § 4; 1955, ch. 322, § 1; 1959, ch. 25, § 6.]

59-1712. License fees — Interest — Penalty. — The schedule of license fees to be charged and received by the commission for the licenses issued hereunder shall be as follows:

(1) For each manufacturer, distributor, wholesaler, factory branch or distributor branch, one hundred dollars ($100).

(2) For each franchised motor vehicle dealer selling both new and used motor vehicles, twenty-five dollars ($25.00).

(3) For each motor vehicle dealer selling only used motor vehicles, twenty-five dollars ($25.00).

(4) For each factory representative or distributor representative, fifteen dollars ($15.00).

(5) For each motor vehicle salesman, three dollars ($3.00).

Provided that any person, firm or corporation required to be licensed hereunder, who fails to make application for such license at the time required herein, shall, in addition to the aforesaid fees, pay interest at the rate of six per cent (6%) per annum for the period of time during which he shall operate without a proper license and, in addition thereto, shall pay a penalty of fifty per cent (50%) of the amount of the license fee which said penalty may, however, be waived in whole or in part within the discretion of the commission. [Acts 1955, ch. 79, § 4; 1957, ch. 56, § 5; 1959, ch. 25, § 7.]

59-1713. Location of business specified—Employer of salesman—Changes.—The license issued to each motor vehicle dealer, manufacturer, distributor, wholesaler, factory branch or distributor branch shall specify the location of the factory, dealership, office, or branch thereof. In case such location is changed, the commission shall indorse the change of location on the license without charge, if it be within the same county. A change to another county shall require a new license. Every motor vehicle salesman, factory representative or distributor representative shall have a license upon his person when engaged in his business and shall display same upon request. The name of the employer of such salesman, factory representative, or distributor representative shall be stated on said license and in case of a change of employer the holder of such license shall immediately mail same to the commission for its indorsement of such change thereon. A fee of one dollar ($1.00) shall be charged by the commission for indorsing each such change of employer on said licenses and said fee shall accompany the application for the change. [Acts 1955, ch. 79, § 4.]

59-1714. Grounds for denial, suspension, or revocation of license.—The commission may deny an application for a license or revoke or suspend a license after it has been granted for any of the following reasons:

(a) On satisfactory proof of unfitness of the applicant or the licensee, as the case may be, under the standards established, and set out in this chapter.

(b) For fraud practiced or any material misstatement made by an applicant in any application for a license under the provisions of this chapter.

(c) For any willful failure to comply with the provisions of this chapter or with any rule or regulation adopted and promulgated by the commission under authority vested in it by this chapter.

(d) Change of condition after license is granted or failure to maintain the qualifications for license.

(e) Constant or flagrant violation of any of the rules or regulations of this commission.

(f) Being a motor vehicle dealer or a motor vehicle salesman who:

(1) Has required a purchaser of a motor vehicle as a condition of sale and delivery thereof to also purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided however, that this prohibition shall not apply as to special features, appliances, accessories or equipment which is ordinarily installed on the vehicle when received or acquired by the dealer.

(2) Has represented and sold as a new and unused motor vehicle any motor vehicle which has been operated for demonstration purposes or which is otherwise a used motor vehicle.

(3) Has sold or offered for sale as a new and unused motor vehicle any motor vehicle for which he cannot secure for the purchaser thereof such new car warranty as may be extended by the manufacturer of the car to the purchaser of one of its new cars, unless he shall explain to the purchaser and show on the bill of sale that the car is being sold without any warranty being extended by the manufacturer.

(4) Has no established place of business which is used or will be used for the purpose of selling, displaying, or offering for sale, motor vehicles; provided, however, that this provision shall have no application to applicants for a license to do business as a wholesale used motor vehicle dealer only.

(5) Resorts to or uses any false or misleading advertising in connection with his business as such motor vehicle dealer or motor vehicle salesman.

(6) Gives false or fictitious names or addresses for the purpose of registering the sale of a motor vehicle, or who makes application for the registration of a motor vehicle in the name of any person other than the true owner, or any other fraudulent practices to evade the meaning of this section.

(g) Being a manufacturer of, distributor, wholesaler, distributor branch or factory branch, officer, agent, or other representative thereof who has coerced or attempted to coerce any motor vehicle dealer:

(1) To order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts, or accessories therefor or any other commodity or commodities which shall not have been voluntarily ordered by said motor vehicle dealer.

(2) To order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of said motor vehicle as publicly advertised by the manufacturer thereof.

(3) To order for or from any person, firm, or corporation any parts, accessories, equipment, machinery, tools, appliances, or any commodities whatsoever not manufac-

tured, produced or distributed by such manufacturer, distributor, wholesaler, distributor branch, or factory branch.

(h) Being a manufacturer of motor vehicles, distributor, wholesaler, distributor branch or factory branch or officer, agent, or other representative thereof, who:

(1) Has refused to deliver to any duly licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new and unused motor vehicles sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or factory branch any motor vehicle publicly advertised for immediate delivery within sixty (60) days after such dealer's order shall have been received.

(2) Has attempted to induce or coerce, or has induced or coerced any motor vehicle dealer to enter into any agreement with such manufacturer, distributor, wholesaler, distributor branch or factory branch, or representative thereof, or to do any other act unfair to said dealer by threatening to cancel any franchise or contractual agreement existing between such manufacturer, distributor, wholesaler, distributor branch or factory branch and said dealer.

(3) Has sold or offered for sale to a franchised motor vehicle dealer any supplies, materials, or other thing of value at the time of and as a part of the negotiations for a new or renewal contract renewing or extending for an additional period of time such motor vehicle dealer's franchise agreement, regardless of whether such sale or offer of sale shall be made a prerequisite to the renewal of the franchise agreement or not.

(4) Has unfairly, without due regard to the equities of the said dealer and without just provocation, canceled the

franchise of any motor vehicle dealer. The nonrenewal of a franchise or selling agreement without just provocation or cause shall be deemed an evasion of this paragraph and shall constitute an unfair cancellation regardless of the terms or provisions of such franchise or selling agreement.

(5) Has refused to extend to a motor vehicle dealer the privilege of determining the mode or manner or available transportation facilities which said dealer desires to be used or employed in making deliveries of new motor vehicles to him or it.

(6) Has attempted to enter into a franchise agreement with a dealer who does not at the time of the franchise agreement have proper facilities to provide the services to his purchasers of new automobiles which are guaranteed by the new car warranties issued by the manufacturers.

(i) Being a motor vehicle automobile auction or acting as agent thereof who:

(1) Willfully permits any person or persons to sell, buy, exchange or in any other manner participate in such automobile auction sales without first determining that such person or persons are duly licensed motor vehicle dealers, and/or duly authorized agents as may reasonably be required. [Acts 1955, ch. 79, § 5; 1957, ch. 56, § 6; 1959, ch. 25, § § 8, 9.]

59-1715. Hearing mandatory—Notice—Witnesses. —The commission may deny any application for a license or suspend or revoke a license issued only after a hearing of which the applicant or licensee affected shall be given at least ten (10) days written notice specifying the reason for denying the applicant a license or in the case of a revocation or suspension, the offenses of which the licensee

is charged. Such notices may be served as provided by law for the service of notices or by mailing a copy by registered mail return receipt requested to the last known residence or business address of such applicant or licensee. The hearing on such charges shall be at such time and place as the commission may prescribe and the aforementioned notice shall further specify this time and place. If such applicant or licensee is a motor vehicle salesman, factory representative, or distributor representative, the commission shall, in like manner, also notify the person, firm, association, corporation, or trust with whom associated or in whose association he is about to enter. The commission shall have the power to compel the production of records and papers bearing upon the complaints. The commission shall have the power to subpoena and bring before it any person in this state or take testimony of any such person by deposition in the same manner as prescribed by law in judicial procedure before the courts of this state. Any party to such hearing shall have the right of the attendance of witnesses in his behalf upon designating to the commission the person or persons sought to be subpoenaed. If the commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to applicant, and if the commission shall determine that any licensee is guilty of violation of this chapter his or its license shall be suspended or revoked. [Acts 1955, ch. 79, § 6.]

59-1716. Hearing officer—Findings—Concurrence by commission.—All hearings provided for in §§ 59-1715—59-1717 shall be held by a hearing officer designated by the commission, who shall be either a member of the commission or its executive secretary and who shall make findings of fact, conclusions of law, and a proposed order based thereon.

If the commission concurs it shall issue the order, or it may, upon review of the record, make such findings, conclusions, and issue such order as in its discretion the record justifies. [Acts 1955, ch. 79, § 6.]

59-1717. Judicial review.—The decision of the commission in granting or refusing to grant an application for a license or in suspending or revoking a license may be reviewed in the circuit court of Davidson County as provided in chapter 9 of title 27. [Acts 1955, ch. 79, § 6.]

59-1718. Violations — Penalty. — Unless another penalty is in this chapter, or by the laws of this state provided, every person guilty of a violation of any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars ($500), or imprisonment for not more than six (6) months, or both. [Acts 1955, ch. 79, § 7.]

59-1719. Provisions cumulative.—The provisions of this chapter shall be cumulative to existing laws. [Acts 1955, ch. 79, § 8.]

59-1720. Receipts and expenditures.—The commission shall pay alll money received as fees and charges into the state treasury and the budget director shall make such allotments out of the general fund as he may deem proper for the necessary and proper expenses of said commission and no expenditure shall be made by said commission unless and until such allotment has been made by the budget director. Such allotment shall be disbursed under the general budgetary laws of the state of Tennessee. [Acts 1955, ch. 79, § 9.]

APPENDIX F

Formal Complaint of Cocke County Motor Company

TENNESSEE MOTOR VEHICLE COMMISSION
STATE OFFICE BUILDING
NASHVILLE, TENNESSEE

FORMAL COMPLAINT

Firm Name COCKE COUNTY MOTOR COMPANY
Firm Making Complaint

609 W. Broadway
Street Address

License No. D-805

Newport (City or Town) | Cocke (County) | Tennessee (State)

- ☐ Manufacturer
- ☐ Distributor or Wholesaler
- ☐ Factory Branch
- ☐ Distributor Branch
- ☒ Franchised Dealer
- ☐ Used Car Dealer

CHECK BUSINESS

GIVE THE CORRECT NAME AND ADDRESS OF THE FIRM, PERSON OR PERSONS AGAINST WHOM THIS COMPLAINT IS FILED:

FORD MOTOR COMPANY
Dearborn, Michigan

RELATE IN DETAIL THE NATURE OF COMPLAINT: These charges are brought pursuant to THE TENNESSEE DEALER-MANUFACTURER LICENSING LAW, as set forth in Sections 1701-1720, inclusive, Title 59 of Tennessee Code Annotated.

Cocke County Motor Company will be referred to in this complaint as "The Dealer" and Ford Motor Company will be referred to as "The Manufacturer".

—1—

The first complaint is based on violations of sub-sections (2) of Section (H) of Section 1714 of Title 59 of Tennessee Code Annotated, in that it is alleged that the

manufacturer has done acts unfair to the dealer by threatening to cancel the franchise or contractional agreement that existed between the manufacturer and dealer.

In support of this first complaint, it is shown as follows:

(a) That on or about July 1, 1956, Earl Sloane, assistant district sales manager of the Louisville District of Ford Motor Company, made complaint to the dealer that he was realizing too much profit from the sale of new cars and demanded that more vehicles be sold, even if the dealer had to realize much less profit from the sales. In fact, to sell more cars and trucks if only a very small profit could be made. The dealer was not realizing an excessive profit. In fact, the profits being made from the sale of new vehicles was much less in comparison with those previously demanded and allowed by the manufacturer. To have made less profit would have been almost disastrous to the financial welfare of the dealer. About said date, the said Mr. Sloane and one D. C. Burdette, district sales manager of Ford Motor Company, advised the dealer that if more sales of new vehicles were not made, the dealer's franchise and contract would have to be canceled. At the time these demands were made, the dealer was doing all within his power to sell new vehicles and the demands of these representatives of the manufacturer amounted to gross intimidation and coercion.

This was unfair, among other things, due to the fact that the manufacturer had permitted and was permitting its dealers in adjoining counties, and especially one of said counties, to invade his territory and consummate deals in which little or no profit was made. At least one of them engaged in unfair competition and unethical practices by

false and misleading advertising and doing business with known questionable characters.

(b) A Mr. Van de Vort, special field representative of the manufacturer, without the knowledge, consent, or approval of the dealer on or about the day of June, 1957 came to Newport, Tennessee and there contacted one or more persons, including Dr. Hobart Ford, and endeavored to persuade him to accept a franchise in the place and stead of the dealer. At that time no formal notice of intention to cancel the dealer's franchise had been received, and none was received until the following September.

News of this action on behalf of the manufacturer became a matter of public knowledge and as result thereof it was generally rumored that the dealer would soon be out of business and no longer a dealer of Ford products. This had a very detrimental effect upon the dealer's sales and reputation as a dealer. The public became confused as to the status of the dealer and many sales were lost as result thereof.

The dealer learned of these contacts and efforts, and this amounted to a threat or coercion to carry out the requirements of more sales of vehicles, even though he received little or no profit therefrom.

—11—

The second complaint is based on violations of sub-section (4) of Section (H) of Section 1714 Title 59 of Tennessee Code Annotated in that it is alleged that the manufacturer has unfairly, without due regard to the equity of the dealer and without just provocation, canceled the franchise of the dealer.

Appendix F—Formal Complaint of Cocke County Motor Company

In support of this complaint the dealer alleges the following:

(a) That on September 3, 1957 the manufacturer notified the dealer of the termination of his franchise in which notice he was advised that he would be permitted to file a written request for a conference with the Dealer Policy Board at Dearborn, Michigan. This request was made, and on October 14, 1957 the dealer appeared before said Board and presented such facts and evidence as obviously convinced the Board that his franchise should not be canceled. The dealer was advised to return to his business and make certain adjustments, which he did. Mr. O'Neil, a member of the Dealer Policy Board that heard the dealer's side of the issues, personally came to Newport in December, 1957 and made an investigation. The dealer was lead to believe that everything was progressing satisfactorily and thereupon the dealer with new determination entered upon his duties as a dealer, and was enjoying the best business he had experienced for a long while.

However, on March 24, 1958 the dealer was advised by Duane D. Freese, executive secretary of the Dealer Policy Board that the sales agreement between the manufacturer and the dealer, dated February 1, 1955 was terminated.

The dealer has been a franchised Ford dealer, along with his father, for 43 years. They have purchased real estate, a sales location, service department and general garage to carry on the business of a Ford dealer, in which they have invested many thousands of dollars. In addition, the dealer has purchased large amounts of equipment, parts and accessories, all of which are especially designed for the furtherance of a Ford dealership. The cancellation of the franchise will be of great monetary loss to the dealer and will in all probability result in financial disaster to him.

Appendix F—Formal Complaint of Cocke County Motor Company

During all the time the dealer has had the Ford franchise he has always endeavored to represent the manufacturer fairly. The dealer has maintained adequate facilities, including a sales and shop force and has made every reasonable effort to sell as many Ford products as possible.

The competition in the dealer's territory has been very keen and competitive, and the policy of the manufacturer in permitting other dealers, as above stated, to sell its products within his territory has been very prejudicial and harmful to him. This of course, has been responsible for any decline in sales or lack of sales on his part.

Whereupon, by reason of all of the foregoing, and other good and sufficient reasons which will be shown in proof on the hearing, the dealer requests that a hearing be set in connection with the foregoing violations, and that unless said franchise notice given by the manufacturer be canceled and rescinded, that the license of said motor company issued pursuant to said act be revoked or rescinded, and that all penalties of said act be adjudicated against the manufacturer.

[Verified May 23, 1958 by E. R. Walker, Jr. for Cocke County Motor Company.]

* * *

APPENDIX G

Excerpts from Complaint of Appellant in Chancery Court, Davidson County

* * *

VII

Complainant avers that said Chapter 79 of the Public Acts of Tennessee of 1955, and the codification thereof in the Tennessee Code Annotated, known as Chapter 17—Motor Vehicle Sales Licenses, Sections 59-1701 through 59-1720 inclusive, are wholly null, void, invalid and unconstitutional for the following reasons, among others:

1. Said Act is void and of no effect in that it is contrary to the Constitution of the United States, and more particularly to Amendment XIV thereof, and more particularly in that it seeks * * * to deprive it of liberty and property without due process of law, and deny it equal protection of the laws.

* * *

6. The Act denies complainant, and others in like situations, procedural due process of law in that it permits and authorizes the termination and cancellation of complainant's license to do business in Tennessee, and the license of its sales representatives furthering complainant's business in Tennessee upon grounds which are stated with such generality, and without statutory definition so as to apprise complainant and others of the conduct sought to be condemned thereby, and of the acts prohibited by said statute and made criminal violations by its terms.

7. The Act seeks to delegate legislative authority to the Commission to terminate the complainant's license to do business in Tennessee upon vague and general charges without proper statutory standards or definitions of the conduct prohibited contrary to substantive due process of

Appendix G--Excerpts from Complaint of Appellant in Chancery Court, Davidson County

law, and violates procedural due process of law, contrary to both the Constitution of Tennessee and the Constitution of the United States by vesting quasi judicial powers in a commission inherently biased by the mandatory qualifications for appointment, thereby permitting automobile dealers to sit in judgment upon the motives, wisdom, and equities of the action of a manufacturer of motor vehicles in seeking to assert its property and contract rights in connection with any bona fide disputes between dealers and manufacturers.

8. The provisions of said Act purport to require complainant and its representatives to obtain state licenses before conducting its interstate business in the State of Tennessee and thereby imposes unlawful burdens and restrictions on interstate commerce and are repugnant to Article I, Section 8 of the Constitution of the United States.

* * *

APPENDIX H

Excerpt from Deposition of Walter J. Cooper, General Sales Manager of Ford Division, Ford Motor Company, December 19, 1958.

Q. * * * I will ask you if you have at my request obtained from the records of the company the various applications beginning in 1955 and continuing down to the present time under which these licenses were issued and if you have the original documents before you? A. I do.

Q. For what years do you have the original applications before you? A. 1955, 1956, 1957 and 1958.

Q. Mr. Cooper, will you examine each of these applications and state whether or not on each of the applications you referred to there was a protest registered at the time of each application, and, if so, will you read the protest into the record? A. I have examined each application, and there is a protest on the back of the applications, and they read identically in each case as follows:

> "Applicant hereby protests its compliance with the requirements of the Tennessee Motor Vehicle Commission Act as a prerequisite to its continuation of business in the state of Tennessee, in addition to the qualification fees and taxes now paid for that privilege and avers that this application is filed involuntarily under duress and compulsion of the criminal and civil penalties provided by statute. Applicant further states this statute is unreasonable, discriminatory, and violative of Federal and State constitutional rights of applicant. In making this application, applicant reserves the right to contest the validity of said statute on the grounds of unconstitutionality and any other proper ground."

Excerpt from Deposition of Walter J. Cooper, General Sales Manager of Ford Division, Ford Motor Company, December 19, 1958.

Q. Mr. Cooper, was what you have just read into the record contained on every application for licenses that this company has ever presented to the state of Tennessee and on which licenses were issued? A. Yes, it was.

* * *

APPENDIX I

Excerpt from Deposition of William M. Liddon, Former Pontiac Dealer, May 7, 1959

Q. What would be the situation if the dealer disagreed with the factory representative or the field men? A. Well, the dealer then is usually subjected to threats. It depends on the season of the year as to the terminology that would be used in this threat. If it was toward the end of the model run which is the season of the year where the dealer would have the greatest resistance toward taking on more cars, because all cars sold toward the end of the model run are sold at a substantial discount and little or no profit. Then the usual threat would be unless he cooperated in taking these extra cars he would be denied proper allotment of the new car when the new model came out.

* * *

APPENDIX J

Notice of Hearing Before Motor Vehicle Commission

BEFORE THE TENNESSEE MOTOR VEHICLE COMMISSION

In the matter of

E. R. WALKER, JR.
DBA COCKE COUNTY MOTOR COMPANY
609 West Broadway
Newport, Tennessee

vs.

FORD MOTOR COMPANY
American Road
Dearborn, Michigan

NOTICE OF HEARING

Notice is hereby given that a hearing will be held on the formal complaint filed the 23rd day of May, 1958, by the Cocke County Motor Company, Newport, Tennessee. A copy of which has been served on the defendant, Ford Motor Company, Dearborn, Michigan.

You are hereby summoned to appear before me, Chester R. Pace, Hearing Officer, at ten o'clock (10) A. M. (CST) Thursday, June 26, 1958, at the office of the Tennessee Motor Vehicle Commission, B-1 State Office Building, Nashville, Tennessee.

The Complaint is hereby directed to file briefs in accordance with the rules of hearing, a copy of which is enclosed. This the 11th day of June, 1958.

TENNESSEE MOTOR VEHICLE COMMISSION
Chester R. Pace, Executive Secretary

APPENDIX K

Excerpts from Deposition of Chester R. Pace, Executive Director, Tennessee Motor Vehicle Commission, May 7, 1959

Q. H[redacted]long were you in the automobile business as a dealer? A. I lacked two years being eligible for the Old Timers Club, that was thirty-two years. I was in it thirty years, I guess, approximately thirty years.

Q. What kind of dealership or franchise did you have? A. I had Chrysler Franchise, Dodge and Plymouth.

* * *

Q. Were you, as a dealer, ever asked to take in cars for sale that you didn't want or felt you didn't have good market for? A. Oh yes. I have many times done that. The tail end of model changes, and particularly in a territory where you have an automobile that is not popular. For instance, you take some sport model automobiles that wouldn't be popular, in fact I have had cars such as that shipped me that I didn't know I had them until I started unloading them with a bill-of-lading attached.

* * *

Q. Did you take any part in having this Act of 1955 that is involved in this case prepared before it was introduced? A. I did not.

Q. Did you work for the passage of it or so call lobby for it? A. No, sir, no lobbying. I wasn't in the Legislature any time during that time the bill was passed.

Q. Was it sponsored and put through the Legislature by the automobile dealers of Tennessee? [Over objection.] A. It was.

Q. It was? A. Yes, sir.

Q. And was it part of a rather general movement that took place in other states with other states asking for similar legislation? A. I couldn't answer that one.

Appendix K—Excerpts from Deposition of Chester R. Pace, Executive Director, Tennessee Motor Vehicle Commission, May 7, 1959

Q. But you do know that this one was sponsored, prepared and sponsored and lobbied through, I am discussing lobbied in the sense of using their influence to get it passed by the 1955 Tennessee Legislature? A. Yes, sir.

Q. Was it sponsored by the Tennessee Automobile Dealers Association or Automotive Association? A. To the best of my knowledge it was.

Q. And was Mr. Whelchel the secretary at that time? A. He was.

Q. Of the Tennessee Automobile Association? A. Yes, sir.

Q. They are the people who sponsored it and put it through in Tennessee? A. That is true.

* * *

APPENDIX L

Excerpts from Deposition of David P. Whelchel, Executive Vice-President and General Manager, Tennessee Automotive Association, June 19, 1959.

Q. Mr. Whelchel, you have already identified yourself and your position, I'm sure, in previous testimony? A. Yes, sir.

Q. Mr. Whelchel, have you in your capacity as I believe you are executive secretary? A. Executive vice-president and general manager.

Q. Executive vice-president and general manager of Tennessee Automotive Association? A. Yes, sir.

Q. Have you had occasion to investigate and become familiar with the general size of the automobile dealer industry in the State of Tennessee? A. Yes, sir.

Q. In what way did you do that? A. We sent a questionnaire out to the members of our association.

Q. And when did you send that questionnaire out? A. It was dated January 21, 1957.

Q. Now, how many members belong to your association? A. Now or then?

Q. Then. A. Approximately eight hundred.

Q. And were they new car dealers or old car dealers, or both? A. Most new car dealers. Ninety percent, I guess.

Q. Would that figure constitute most of the new car dealers in Tennessee? A. Yes, sir.

* * *

Q. I believe you requested the Governor to re-appoint as chairman Mr. Carroll G. Oakes? A. Yes, sir.

Q. He had been chairman up to that time? A. Yes, sir.

Q. And he was a licensed DeSoto-Plymouth dealer in Morristown, Tennessee? A. Yes, sir, and the T.I.A.D.A. approved it.

Appendix L—Excerpts from Deposition of David P. Whelchel, Executive Vice-President and General Manager, Tennessee Automotive Association, June 19, 1959

Q. Did the Governor re-appoint Mr. Oakes? A. No, sir, he has not yet. He has taken no action on it as of this date.

Q. Can you conveniently give us altogether at one time a list of the persons who at the present time constitute the members of the commission of the Tennessee Motor Vehicle Commission? A. Yes, I think I can. The chairman is still Carroll Oakes, because the law says he will continue to serve until his successor is qualified.

Take them by congressional districts. A. The First Congressional District, J. A. Clark, Kingsport.

Q. Describe his business. A. He is the Buick dealer there. The Second Congressional District is Roy A. Cruse, Rambler dealer, Knoxville; Third Congressional District is Eugene Calloway, Chrysler-Plymouth dealer at Cleveland, Tennessee; Fourth Congressional District is Ivan Potts, Jr., Shelbyville, Ford dealer; Fifth Congressional District is Harry Sadler, Chevrolet dealer at Goodlettsville, Tennessee; Sixth Congressional District is David Johnson, Lincoln-Mercury dealer and used car dealer at Pulaski, Tennessee; Seventh Congressional District is Fred Mitchie, used car dealer at Jackson; Eighth Congressional District is Herbert G. Roberts, Chevrolet dealer at Dyersburg; Ninth Congressional District is John E. Stamps, Oldsmobile dealer at Collierville.

* * *

APPENDIX M

Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel filed August 5, 1959.

Motion was made by Liddon, seconded by Walker, that attorney Harris draw up a resolution by direction of the Board, submitting to the Governor the names of the dealers nominated from each Congressional District, to be submitted to the Governor. This resolution was submitted to the Board and upon motion of Liddon, seconded by Roberts, that the resolution be accepted and directed that it be delivered in person to the Governor by Oakes, Bryant and Whelchel, at the earliest possible moment. The motion was passed unanimously. The resolution adopted by the Board was as follows:

"WHEREAS, by Section 3 of Chapter 79 of the Public Acts of 1955, Tennessee Automotive Association is charged with the duty of submitting the names of at least 20 automobile dealers, at least 2 of which reside in each Congressional District of the State of Tennessee, from which the Governor will appoint the Tennessee Motor Vehicle Commission; and,

* * *

"WHEREAS, the said Board of Directors of Tennessee Automotive Association at a special meeting held on March 14, 1955, considered the names of a number of automobile dealers qualified for such appointment.

"NOW, THEREFORE, BE IT RESOLVED, That the Tennessee Automotive Association certifies the following list of dealers to His Excellency, The Governor of the State of Tennessee, from which the membership of the Tennessee Motor Vehicle Commission shall be chosen, with the recommenda-

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

tion that the first name listed under each Congressional District be appointed:

FIRST CONGRESSIONAL DISTRICT

1. Carroll G. Oakes—DeSoto-Plymouth Dealer—Morristown
2. J. A. Clark—Buick-Oldsmobile Dealer—Kingsport
3. H. Garner Range, Jr.—Buick Dealer—Johnson City

SECOND CONGRESSIONAL DISTRICT

1. L. F. Buschbaum—Used Car Dealer—Knoxville
2. Paul K. Costner—Ford Dealer—Maryville
3. Roy A. Cruze—Nash Dealer—Knoxville
4. Pete Paine—Pontiac Dealer—Maryville
5. Glen Van Slyke—Ford Dealer—Oak Ridge

THIRD CONGRESSIONAL DISTRICT

1. Forrest F. Cate—Ford Dealer—Chattanooga
2. S. I. Bryant—Buick Dealer—Cleveland
3. Eugene Callaway—Dodge-Plymouth Dealer—Cleveland

FOURTH CONGRESSIONAL DISTRICT

1. John L. McCawley—Ford Dealer—Cookeville
2. Roy G. Byrn—Buick Dealer—Murfreesboro
3. Ivan Potts, Jr.—Ford Dealer—Shelbyville

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

FIFTH CONGRESSIONAL DISTRICT

1. W. M. Liddon—Pontiac Dealer—Nashville
2. Lem Stevens—Ford Dealer—Nashville
3. R. L. Parnell—DeSoto-Plymouth Dealer—Nashville

SIXTH CONGRESSIONAL DISTRICT

1. Robert Norris—Used Cars Dealer—Clarksville
2. Ed N. Parkes, Sr.—Ford Dealer—Lawrenceburg
3. J. H. Dowling—Chevrolet Dealer—Columbia
4. E. M. Adcox—Ford Dealer—Hobenwald
5. Jack Saunders—Cadillac-Oldsmobile Dealer—Clarksville
6. Lucien Caperton—Chevrolet Dealer—Lawrenceburg

SEVENTH CONGRESSIONAL DISTRICT

1. Fred Michie—Used Cars Dealer—Jackson
2. Carl Tisdal—Ford Dealer—Jackson
3. Gordon J. Wilder—Chevrolet Dealer—Huntingdon
4. Neil Stroud—Chevrolet Dealer—Henderson
5. Emmett Yeiser—Chevrolet Dealer—Savannah

EIGHTH CONGRESSIONAL DISTRICT

1. John M. Walker—Chevrolet-Cadillac-Oldsmobile Dealer—Covington
2. Herbert G. Roberts—Chevrolet Dealer—Dyersburg
3. Ed Shuck—Ford Dealer—Newbern

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

NINTH CONGRESSIONAL DISTRICT

1. Lee McCormick—Chevrolet Dealer—Memphis
2. Roy Cortner—Used Cars Dealer—Memphis
3. C. W. Bond—Ford Dealer—Arlington
4. John E. Stamps—Oldsmobile Dealer—Collierville

* * *

"WHEREAS, by Section 3 of Chapter 79 of the Public Acts of 1955, Tennessee Automotive Association is charged with the duty of submitting the names of at least 20 automobile dealers, at least 2 of which reside in each Congressional District of the State of Tennessee, from which the Governor will appoint the Tennessee Motor Vehicle Commission; and, * * *

"WHEREAS, the said Board of Directors of Tennessee Automotive Association at a special meeting held on March 14, 1955, considered the names of a number of automobile dealers qualified for such appointment.

"NOW, THEREFORE, BE IT RESOLVED, That the Tennessee Automotive Association certifies the following list of dealers to His Excellency, The Governor of the State of Tennessee, from which the membership of the Tennessee Motor Vehicle Commission shall be chosen, with the recommendation that the first name listed under each Congressional District be appointed:

FIRST CONGRESSIONAL DISTRICT

1. Carroll G. Oakes—DeSoto-Plymouth Dealer—Morristown

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

2. J. A. Clark—Buick-Oldsmobile Dealer—Kingsport
3. H. Garner Range, Jr.—Buick Dealer—Johnson City

SECOND CONGRESSIONAL DISTRICT

1. L. F. Buschbaum—Used Cars Dealer—Knoxville
2. Paul K. Costner—Ford Dealer—Maryville
3. Roy A. Cruze—Nash Dealer—Knoxville
4. Pete Payne—Pontiac Dealer—Maryville
5. Glen Van Slyke—Ford Dealer—Oak Ridge

THIRD CONGRESSIONAL DISTRICT

1. Forrest F. Cate—Ford Dealer—Chattanooga
2. S. I. Bryant—Buick Dealer—Cleveland
3. Eugene Callaway—Dodge-Plymouth Dealer—Cleveland

FOURTH CONGRESSIONAL DISTRICT

1. John L. McCawley—Ford Dealer—Cookeville
2. Roy G. Byrn—Buick Dealer—Murfreesboro
3. Ivan Potts, Jr.—Ford Dealer—Shelbyville

FIFTH CONGRESSIONAL DISTRICT

1. W. M. Liddon—Pontiac Dealer—Nashville
2. Lem Stevens—Ford Dealer—Nashville
3. R. L. Parnell—DeSoto-Plymouth Dealer—Nashville

SIXTH CONGRESSIONAL DISTRICT

1. Robert Norris—Used Cars Dealer—Clarksville
2. Ed N. Parkes, Sr.—Ford Dealer—Lawrenceburg

Appenaix M—Ex.erpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

3. J. H. Dowling—Chevrolet Dealer—Columbia
4. E. M. Adcox—Ford Dealer—Hohenwald
5. Jack Saunders — Cadillac-Oldsmobile Dealer — Clarksville
6. Lucien Caperton—Chevrolet Dealer—Lawrenceburg

SEVENTH CONGRESSIONAL DISTRICT

1. Fred Michie—Used Cars Dealer—Jackson
2. Carl Tisdal—Ford Dealer—Jackson
3. Gordon J. Wilder—Chevrolet Dealer—Huntingdon
4. Neil Stroud—Chevrolet Dealer—Henderson
5. Emmett Yeiser—Chevrolet Dealer—Savannah

EIGHTH CONGRESSIONAL DISTRICT

1. John M. Walker — Chevrolet-Cadillac-Oldsmobile Dealer—Covington
2. Herbert G. Roberts—Chevrolet Dealer—Dyersburg
3. Ed Shuck—Ford Dealer—Newbern

NINTH CONGRESSIONAL DISTRICT

1. Lee McCormick—Chevrolet Dealer—Memphis
2. Roy Cortner—Used Cars Dealer—Memphis
3. C. W. Bond—Ford Dealer—Arlington
4. John E. Stamps—Oldsmobile Dealer—Collierville

* * *

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

Oakes then explained that, under the staggered system of appointing members to the Tennessee Motor Vehicle Commission, that the terms of Clarke in the First Congressional District, Potts in the Fourth Congressional District and Michie in the Seventh Congressional District, would expire June 30, 1956. He pointed out that the Law requires T.A.A. to nominate dealers to the Governor for appointment on the Commission, and on his motion, seconded by Wilder, the Board nominated the following for submission to the Governor; and directed that a copy of the Resolution to the Governor be attached to it, and become a part of these minutes:

FIRST CONGRESSIONAL DISTRICT

James A. Clarke, Kingsport
Claude Hurley, Greeneville
J. L. Latimer, Jr., Kingsport
J. Lacy Myers, Newport

FOURTH CONGRESSIONAL DISTRICT

J. Ivan Potts, Jr., Shelbyville
James A. Mullican, McMinnville
James Brady, McMinnville

SEVENTH CONGRESSIONAL DISTRICT

Fred Michie, Jackson
W. Carl Tisdal, Jackson
Gordon Wilder, Huntingdon

WHEREAS, by Section 3 of Chapter 79 of the Public Acts of 1955, Tennessee Automotive Association is charged

Appendix M--Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

with the duty of submitting the names of automobile dealers who reside in the First, Fourth and Seventh Congressional Districts, from which the Governor will appoint one from each District as members of the Tennessee Motor Vehicle Commission, by virtue of the fact that their one year term expires June 30, 1956; * * *

WHEREAS, the said Board of Directors of the Tennessee Automotive Association at its annual summer meeting held on June 25, 1956, considered the names of a number of automobile dealers qualified for such an appointment;

NOW, THEREFORE, BE IT RESOLVED, that the Tennessee Automotive Association certifies the following list of dealers to His Excellency, the Governor of the State of Tennessee, from which the membership of the Tennessee Motor Vehicle Commission shall be chosen, from those Congressional Districts whose terms expire June 30, 1956:

1. [Illegible]
2. Claude Hurley, Ford Dealer, Greenville
3. J. L. Latimer, Jr., Chevrolet Dealer, Kingsport
4. J. Lacy Myers, Chevrolet Dealer, Newport

FOURTH CONGRESSIONAL DISTRICT

1. Ivan Potts, Ford Dealer, Shelbyville
2. James A. Mullican, Chevrolet Dealer, McMinnville
3. James Brady, Dodge-Plymouth Dealer, McMinnville

SEVENTH CONGRESSIONAL DISTRICT

1. Fred Michie, Used Car Dealer, Jackson

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

2. W. Carl Tisdal, Ford Dealer, Jackson

3. Gordon Wilder, Jr., Chevrolet Dealer, Huntingdon

* * *

President Oakes then brought up the question of TIADA members requesting T. A. A. to support an amendment to the dealer-manufacturer licensing law, giving equal representation of used car dealers, on the Tennessee Motor Vehicle Commission. Various means were discussed relative to TIADA submitting a list of nominations to the Governor for vacancies, as they occur on the Commission. There was a spirited discussion on this matter, that was participated in by practically every Director present. Liddon made a motion in three parts;

* * *

(3) That the president appoint a committee to go to and visit with the TIADA, to explain to them the reasons behind this deal, and to sell the merits of the act to the independent association, and to attempt, as far as possible, to justify in the minds of the members of TIADA, the need for a majority of franchised dealers being on the Commission, for the reasons that a higher percentage of the problems raised, are related to matters between the manufacturer and the franchised dealer, and were not related to independent dealers.

The motion was seconded by Parnell and passed with two dissenting votes.

* * *

WHEREAS, by Section 3 of Chapter 79 of the Public Acts of 1955, the Tennessee Automotive Association is charged with the duty of submitting the names of automo-

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

bile dealers who reside in the Second, Fifth and Eighth Congressional Districts, from which the Governor will appoint one from each District as members of the Tennessee Motor Vehicle Commission, by virtue of the fact that their terms of office expire June 30, 1958;

* * *

WHEREAS, at a regular meeting of the Board of Directors of the Tennessee Automotive Association, held January 15, 1957, a measure was unanimously passed by the Board, that in the future, when terms of the Commissioners on the Tennessee Motor Vehicle Commission expired that the Board of Directors of the Tennessee Independent Automobile Dealers Association would be consulted and nominations secured from them for the vacancies to be appointed; and

WHEREAS, Commissioners L. F. Buschbaum of Knoxville and L. D. Stevens of Nashville have notified the Tennessee Automotive on the Tennessee Motor Vehicle Commission representing their Congressional Districts; and

WHEREAS, the Board of Directors of the Tennessee Automotive Association, at its annual summer meeting here in Nashville on June 16, 1958, considered the names of automobile dealers qualified for such an appointment and secured from the Tennessee Independent Automobile Dealers Association, the approval of their appointments;

NOW, THEREFORE, BE IT RESOLVED, that the Tennessee Automotive Association, in full agreement with the Tennessee Independent Automobile Dealers Association, certifies the following list of dealers to His Excellency, the

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

Governor of the State of Tennessee, from which the membership of the Tennessee Motor Vehicle Commission shall be chosen, from those Congressional Districts whose terms expire June 30, 1958;

SECOND CONGRESSIONAL DISTRICT

1. Roy A. Crusé, Rambler Dealer, Knoxville
2. F. D. Eagleton, Ford Dealer, Maryville

FIFTH CONGRESSIONAL DISTRICT

1. Harry Sadler, Chevrolet Dealer, Goodlettsville
2. J. Houston King, Rambler Dealer, Nashville

EIGHTH CONGRESSIONAL DISTRICT

1. Herbert G. Roberts, Chevrolet Dealer, Dyersburg

* * *

WHEREAS, Section 3, of Chapter 79, of the Public Acts of 1955, the Tennessee Automotive Association is charged with the duty of submitting the names of automobile dealers, who in the event of death, resignation or removal of any person serving on the Tennessee Motor Vehicle Commission, the vacancy shall be filled by appointment, as aforesaid, for the unexpired portion of the term, and

WHEREAS, Hon. Robert Norris, a member of the Tennessee Motor Vehicle Commission of Clarksville, from the Sixth Congressional District, whose term expires June 30, 1960, has moved to Texas, is no longer an automobile

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

dealer qualified to serve on the Commission, and is no longer a resident of Tennessee, and

* * *

WHEREAS, the said Board of Directors of the Tennessee Automotive Association at a regular meeting at the annual convention at the Peabody Hotel in Memphis, Tennessee on May 27, 1957, with consultation and full approval from the Tennessee Independent Automobile Dealers Association, considered the names of automobile dealers qualified for appointment in the Sixth Congressional District, to fill said vacancy, expiring June 30, 1960.

Association in consultation and with full approval of the Tennessee Independent Automobile Dealers Association, submits the following nominations of qualified automobile dealers, licensed under the Act, to His Excellency, the Governor of the State of Tennessee, for appointment for the said unexpired term:

1. David Johnson, Pulaski, Tennessee (Lincoln-Mercury—Used Car Dealer)
2. Gordon Barnes, Fayetteville, Tennessee (Used Car Dealer)
3. Hugh Brewer, Franklin, Tennessee (Used Car Dealer)

* * *

APPENDIX N

Exhibit 35 to Deposition of Walter J. Cooper, December 19, 1958

FORD MOTOR COMPANY
Intra-Company Communication

FORD DIVISION
GENERAL OFFICE
December 15, 1958

To: Mr. N. A. Smith
Office of General Counsel
Central Staff

cc: Messrs. Walter J. Cooper
E. G. Acomb
P. W. Czamanske
G. A. Schumm

SUBJECT: Vehicle Shipments to Dealers in the State of Tennessee

Pursuant to your request of Monday, December 8, we have reviewed with the districts involved the sources of supply of passenger cars and trucks shipped to dealers in the State of Tennessee during the years 1955 and 1958. This information is outlined below:

ASSEMBLY PLANT SOURCES OF SUPPLY

Cars 1955	Trucks 1955	Cars 1958	Trucks 1958
Atlanta	Dallas	Atlanta	Kansas City
Louisville	Louisville	Louisville	Chicago
Dallas	Memphis	Memphis	Louisville
Memphis	Highland Park	Mahwah	Mahwah
Dearborn	Norfolk	Norfolk	Lorain
Norfolk	Atlanta	Dearborn	Norfolk
		Kansas City	Dallas
		Lorain	Atlanta
		Wixom	
		Dallas	
		Chicago	

* * *

W. L. MATHEWS
W. L. Mathews
Distribution Department

* * *

APPENDIX O

Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958

FORD MOTOR COMPANY — FORD DIVISION
INTRA-COMPANY COMMUNICATION — GENERAL OFFICE

August 23, 1957

To: Mr. J. O. Wright
Subject: Cocke County Motor Company,
Newport, Tennessee

The General Sales Office recommends termination of the Ford Sales Agreement with Cocke County Motor Company, a partnership consisting of Messrs. E. R. Walker, Sr. and E. R. Walker, Jr., due to unsatisfactory performance within its single point market area.

* * *

Despite a need for and prior history of a sales force, the dealer had no salesmen and only three mechanics in 1948, shortly after the son assumed the responsibility of general manager. At that time the dealer had almost ceased used car activity and was attaining only 40 per cent of parts and 24 per cent of labor objectives.

Operations continued on a low plane through 1953 and in 1954 the District expanded upon earlier efforts to persuade the dealer to improve. It recommended the employment of two combination salesmen to supplement the efforts of the two partners, suggested incentive pay and the lowering of prices to attract and close more deals. For the year the dealer accomplished only 59 per cent of its car and 54 per cent of its truck objectives.

Appendix O—Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958

During 1955, the dealer operated with only one salesman besides the elder Mr. Walker and had no organized solicitation program for vehicles, parts or service. Though sales of trucks represented 136.7 per cent of Chevrolet registrations, car sales were only 69.3 of Chevrolet registrations.

Through April, 1956, the dealer operated at a cumulative loss of $1,565 and sold only 13 cars and 3 trucks against objectives of 20 and 8, respectively, and had closed its paint shop. In August the District held a rehabilitation meeting to present formally and to reiterate earlier recommendations. The presentations covered thirteen major recommendations, including, among others, the employment of two salesmen besides the father on an incentive pay plan, the adoption of solicitation, sales training, sales meeting, competitive pricing and follow up plans, the installation of purchase and expense control systems and the exercise of close supervision and direction of dealership sales, service and expense activities * * *.

In subsequent follow-up contracts it was determined that the dealer was following only two of the recommendations, dismissing the others as being unworkable in its trade area.

At a meeting held in February, 1957, the same recommendations were made. Again the dealer refused to commit to carrying out the recommendations and admitted to no plans for improving its poor performance and penetration * * *.

* * * major performance data are summarized as follows:

Appendix O—Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958

In 1956 and for the first five months of 1957 this dealer's sales represented only 57.7 per cent and 69.5 per cent, respectively, of Chevrolet car and 32.2 per cent and 50.0 per cent of Chevrolet truck registrations.

Comparisons of this dealer's per cent of accomplishment against car, truck, parts and labor sales objectives and returns on Guide for Dealership Investment with like accomplishments and returns for all Ford dealers in the Louisville Sales District are as follows:

Performance Against Objective	Cocke County Motor Co.		Louisville District	
	1956	5 Mos 1957	1956	5 Mos 1957
Cars	67.2	50.0	87.3	90.6
Trucks	37.0	28.6	85.1	94.1
Parts	60.1	50.0	99.1	87.4*
Labor	58.9	18.0	85.6	86.5*
Return on GDI	9.4	15.0	26.8	34.8

*Four months of 1957

From the foregoing it is evident that the dealer's performance has been at a consistently low level. Performance has declined in 1957 when the average performance of all Ford dealers with the District has improved. The dealer has failed to follow the District's recommendations designed to increase sales and has presented no plans for improvement of its own.

The file recommending termination of this dealer has been reviewed in its entirety by and has the concurrence of the Office of the General Counsel.

Appendix O—Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958

Accordingly, if you concur in the recommendation to terminate, it will be appreciated if you will approve the forwarding of a ninety day notice of termination to this dealer.

M. S. McLAUGHLIN

Appendix O—Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958

FORD DIVISION OF FORD MOTOR COMPANY

LOUISVILLE DISTRICT SALES OFFICE — P O Box 539 LOUISVILLE KENTUCKY

March 3, 1958

Mr. Duane D. Freese
Executive Secretary
Dealer Policy Board
Ford Motor Company
Dearborn, Michigan

Dear Mr. Freese:

* * *

Following is a review and comparison of sales and registrations in Cocke County, Tennessee, for 1957 and January 1958:

Sales by Cocke County Motor Co.

	Jan. thru Sept. 1957	Oct. 1957	Nov. 1957	Dec. 1957	Jan. 1958
Cars	35	1	5	4	3
Trucks	13	3	0	1	2

Registrations for Cocke County, Tennessee

	Jan. thru Sept. 1957		Oct. 1957		Nov. 1957		Dec. 1957		Jan. 1958	
	F	C	F	C	F	C	F	C	F	C
Cars	38	65	5	6	8	7	5	9	3	5
Trucks	14	18	3	1	0	0	1	4	1	4

From the above, it will be noted that since the approximate date of Mr. Walker Jr.'s visit to your office (October 2nd), a period of over four months, 13 cars and 6 trucks have been sold by his dealership. In the same period, 21 cars

Appendix O—Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958

and 5 trucks for Ford have been registered in his trade area, against 22 Chevrolet cars and 9 Chevrolet trucks. Our Field Manager secured registrations from the local court house in Newport February 27th, and they were as follows:

	Cars	Trucks
Ford	5	1
Chevrolet	1	1

In this connection, it should be noted that this dealer had sold no Ford cars and no Ford trucks through February 20th. Therefore, it is evident that the registrations are from nearby Ford dealers' sales activities.

We fully recognize the problem presented to a dealer when a nearby competitive dealer (such as the Chevrolet dealer at Mohawk, Va.) is willing to sell and trade at extremely low profit margins and have considered that in our analysis of Mr. Walker's performance. However, comparing the number of Ford cars sold by Mr. Walker in the period October 1957 through January 1958 to the Ford car registrations for the same period, it appears that he is unable to compete against his nearby Ford dealers as well. Among Louisville District dealers in this area, we do not have any that have a background or history of trading in the manner of the Mohawk Chevrolet dealer.

In the period to which we are referring (October 1957 through January 1958) the average remaining gross on cars and trucks for Louisville District dealers of the same size group as Cocke County Motors was as follows as compared to Cocke County Motors:

	Louisville Dist. Dealers (349 Mkt. Pot. and Und.r)				Cocke County Motor Co			
	Oct.	Nov.	Dec.	Jan.	Oct.	Nov.	Dec.	Jan.
Cars	148	260	298	370	502	359	320	475
Trucks	259	324	250	333	324	0	342	244

Appendix O—Exhibits 27 and 32 to Deposition of Walter I. Cooper, December 19, 1958

From the above comparison, it is apparent that this dealer has not made any particular effort to adjust his trading practices to a more competitive level.

* * *

In view of the almost complete lack of progress or efforts to improve the representation in Newport by Mr. Walker Jr. in a period of over four months, it is recommended that we proceed to terminate this dealer's Sales Agreement.

Very truly,

D. C. BURDETTE
D. C. Burdette
District Sales Manager

* * *

APPENDIX P

Sales Agreement of Cocke County Motor Company, Exhibit 14 to Deposition of Walter J. Cooper, December 19, 1958

FORD MOTOR COMPANY
LOUISVILLE DISTRICT

FORD SALES AGREEMENT

AGREEMENT made at Dearborn, Michigan, as of the first day of February, 1955, by and between Cocke County Motor Company, a (State whether an Individual, Partnership, or Corporation. If the Latter, Show Name of State in which Incorporated) partnership consisting of E. R. Walker Sr. & E. R. Walker Jr. with a principal place of business at

Newport (City and Postal Zone) Cocke (County) Tennessee (State) (Street Address) (hereinafter called "Dealer"), and Ford Motor Company, a Delaware corporation with its principal place of business at Dearborn, Michigan (hereinafter called "Company").

* * *

C. The attached Ford Sales Agreement Standard Provisions (Form "FD-925a JAN 55") which have been read and agreed to by each party hereto, are hereby made a part hereof with the same force and effect as if set forth herein in full.

* * *

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

* * *

FORD MOTOR COMPANY

By H. F. CHILDRESS
(Assistant Secretary)

COCKE COUNTY MOTOR COMPANY
(Dealer's Trade Name)

By E. R. WALKER, SR.
(Signature and Title) Partner

E. R. WALKER, JR. Partner

J.K.L
J.S.R.

* * *

Appendix P—Sales Agreement of Cocke County Motor Company, Exhibit 14 to Deposition of Walter J. Cooper, December 19, 1958

FORD MOTOR COMPANY
FORD SALES AGREEMENT
STANDARD PROVISIONS

* * *

11. Dealer shall:

11. (a) ***Sales and Service Responsibility.*** Develop the sale of COMPANY PRODUCTS, and render service with respect thereto * * * to the satisfaction of Company in such locality as from time to time may be designated by Company (hereinafter called Dealer's locality); but Dealer shall not be limited to Dealer's locality in making sales or in rendering service.

* * *

17. (a) ***Termination by Either Party.*** This agreement may be terminated at any time at the will of either party by notice to the other party, and such termination shall operate to cancel each order for a COMPANY PRODUCT theretofore received by Company from Dealer and unfilled * * * on the effective date of termination. In the event of termination by Dealer, notice of termination shall be given to Company not less than thirty (30) days prior to the termination date if Company so requests, and in the event of termination by Company, notice of termination shall be given to Dealer not less than ninety (90) days prior to the termination date.

* * *

APPENDIX Q

Notice of Appeal

STATE OF TENNESSEE
SUPREME COURT

FORD MOTOR COMPANY,
Complainant-Appellee,
vs.

CHESTER R. PACE, EXECUTIVE SECRETARY OF TENNESSEE MOTOR VEHICLE COMMISSION, residing and having an official office in Davidson County, Tennessee,

CARROLL G. OAKES, a resident of Hamblen County, Tennessee, Chairman of said TENNESSEE MOTOR VEHICLE COMMISSION,

L. F. BUSCHMAN, a resident of Knox County, Tennessee,

EUGENE E. CALLOWAY, a resident of Bradley County, Tennessee,

JAMES A. CLARK, a resident of Sullivan County, Tennessee,

FRED MITCHIE, a resident of Madison County, Tennessee,

ROBERT NORRIS, a resident of Montgomery County, Tennessee,

J. IVAN POTTS, JR., a resident of Bedford County, Tennessee,

HERBERT G. ROBERTS, a resident of Dyer County, Tennessee,

JOHN E. STAMPS, a resident of Shelby County, Tennessee, and

L. B. STEVENS, a resident of Davidson County, Tennessee, as members of the said TENNESSEE MOTOR VEHICLE COMMISSION,

GEORGE F. MCCANLESS, ATTORNEY GENERAL OF THE STATE OF TENNESSEE, and

E. R. WALKER, SR. and E. R. WALKER, JR., Partners doing business as COCKE COUNTY MOTOR COMPANY, residents of Cocke County, Tennessee,

Defendants-Appellants.

No. .....

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that FORD MOTOR COMPANY, the appellee above named, hereby appeals to the Supreme Court of the United States from the decree of the Supreme

Court of the State of Tennessee entered on March 11, 1960, reversing the decree of the Chancery Court of Davidson County, Tennessee, a petition for rehearing having been entertained and denied by the Supreme Court of Tennessee on May 4, 1960.

This appeal is taken pursuant to Section 1257(2) of Title 28, United States Code.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) Formal complaint by Cocke County Motor Company against Ford Motor Company, subscribed and sworn to on May 23, 1958, by E. R. Walker, Jr., partner and manager, and filed with the Tennessee Motor Vehicle Commission.

(b) Notice of hearing, dated June 11, 1958, before the Tennessee Motor Vehicle Commission in the matter of E. R. Walker, Jr., d/b/a/ Cocke County Motor Company, against Ford Motor Company, to be held at 10:00 A.M. on June 26, 1958, before Chester R. Pace, Hearing Officer on the formal complaint by Cocke County Motor Company; together with a copy of the Rules of Procedure adopted by the Tennessee Motor Vehicle Commission and transmitted to Ford Motor Company along with the formal complaint.

(c) Complaint in the Chancery Court of Davidson County, Nashville, Tennessee, in the matter of Ford Motor Company vs. Chester R. Pace, et al, verified June 19, 1958, and exhibits thereto.

(d) Injunction of the Chancery Court of Davidson County, issued June 20, 1958, in the matter of Ford

Motor Company vs. Pace, et al, enjoining defendant Tennessee Motor Vehicle Commission, et al, from proceeding further in the pending hearing set before Chester R. Pace, Hearing Officer, on June 26, 1958, until such time as the constitutionality of the statute of the State of Tennessee, under which the Commission is proceeding, and the Rules of Procedure for hearing, can be considered and adjudicated, together with the Subpoena to Answer in Ford Motor Company vs. Chester R. Pace, et al, No. 80109, dated the first Monday in April, 1958, stating the terms of said injunction.

(e) Answer and cross bill of defendants E. R. Walker, Sr., and E. R. Walker, Jr., d/b/a Cocke County Motor Company, in the Chancery Court of Davidson County in Ford Motor Company vs. Chester R. Pace, et al, No. 80109, verified June 24, 1958.

(f) Answer of Ford Motor Company to cross bill in Ford Motor Company vs. Chester R. Pace, et al, Chancery Court, Davidson County, No. 80109.

(g) Injunction issued June 24, 1958, by the Chancery Court in Davidson County in Ford Motor Company vs. Chester R. Pace, et al, enjoining cross defendant Ford Motor Company from proceeding in any way toward the cancellation or revocation of franchise agreement of E. R. Walker, Sr., and E. R. Walker, Jr., d/b/a Cocke County Motor Company, pending the final determination of this cause.

(h) Answers of the following in Ford Motor Company vs. Chester R. Pace, et al, No. 80109, in the Chancery Court of Davidson County:

Defendant George F. McCanless, Attorney General of Tennessee;

Appendix O—Notice of Appeal

Defendants comprising the Tennessee Motor Vehicle Commission;

Intervenor-defendants Tennessee Auto Auction Association and Tennessee Independent Automobile Dealers Association; and

Intervenor-defendant Tennessee Automotive Association,

(i) Deposition of Walter J. Cooper, taken in this cause on behalf of complainant on December 19, 1953, including complainant's exhibits numbered 1 to 38, inclusive, marked therein.

(j) Depositions of John M. Walker, E. B. Smith, William M. Liddon, and Chester R. Pace, taken in this cause on behalf of the defendants on May 7, 1957, including defendants' exhibit number 1, marked in the deposition of Liddon, complainant's exhibits numbers 1 and 2, marked and filed in evidence on cross examination of witness Pace.

(k) Depositions of William M. Liddon and David P. Whelchel taken in this cause on behalf of defendant Pace on June 19, 1959.

(l) Deposition of David P. Whelchel, taken in this cause on behalf of complainant on April 29, 1959, including complainant's exhibits 1 to 7, inclusive, marked and filed in evidence in connection with said deposition.

(m) The Memorandum Opinion in the Chancery Court, Davidson County, Tennessee, in the matter of Ford Motor Company vs. Chester R. Pace, No. 80109, Hon. Ned Lentz, Chancellor, and decree of said Chancery Court in said action, Rule No. 80109.

(n) The Opinion of the Supreme Court of the State of Tennessee, in the matter of Ford Motor Company vs. Chester R. Pace, etc., et al., No. 37155, filed on March 11, 1960, on appeal from the decree of Hon. Ned Lentz, Chancellor, Davidson County.

(o) Judgment (Decree) of the Supreme Court of the State of Tennessee in Ford Motor Company vs. Chester R. Pace, etc., et al. 37155, filed March 11, 1960, reversing and remanding the decree of the Chancery Court of Davidson County.

(p) Petition to Reconsider, Rehear and Act Upon Federal Constitutional Questions filed by complainant and appellee in the Supreme Court of the State of Tennessee, March, 1960.

(q) Opinion of the Supreme Court of the State of Tennessee on Petition to Rehear, filed on May 4, 1960, in the matter of Ford Motor Company vs. Chester R. Pace, et al.

(r) Order of the Supreme Court of the State of Tennessee entered on May 4, 1960, denying complainant's Petition to Rehear in Ford Motor Company vs. Chester R. Pace, et al, etc.

(s) Procedendo in Ford Motor Company against Chester R. Pace, et al, directing the Chancery Court of Davidson County to proceed with the execution of the judgment of the Supreme Court of Tennessee.

(t) Docket entries in the Supreme Court of the State of Tennessee in this cause.

(u) This Notice of Appeal.

III. The following federal questions are presented by this appeal:

(1) Whether the provisions of the statute authorizing revocation of a manufacturer's license by the Motor Vehicle Commission are invalid, on their face or as applied to appellant, under the Due Process Clause of the Fourteenth Amendment of the Federal Constitution, since:

(a) Bias and prejudice against the manufacturer, and pecuniary interest in issues before the Commission, are inherent in the Commission because

(i) the statute (§ 59-1703), as applied and as interpreted by the Supreme Court of Tennessee, requires that the Commission be composed exclusively of automobile dealers who are selected from a list supplied by a private association of automobile dealers; in spite of the fact that

(ii) each of the grounds for revocation specified in § 59-1714(g) and (h) of the statute involves controversies between a manufacturer and a dealer as to which dealers cannot be considered impartial and in which members of the Commission, all of whom are automobile dealers and a majority of whom are franchised new car dealers, have a pecuniary interest.

(b) The statutory language is so vague and uncertain that it is not reasonably possible to ascertain the limits of the conduct proscribed.

(2) Whether the statute is repugnant to the Commerce Clause of the Federal Constitution, since it unduly interferes with the flow of interstate commerce without clear necessity to do so by:

(a) Authorizing disruption of interstate commerce through revocation or suspension of a motor vehicle manufacturer's license to do business in the State of

Tennessee if such manufacturer shall violate the statute in its relations with a single dealer.

(b) Imposing restraints upon the volume of interstate commerce for local economic advantage by:

(i) prohibiting a motor vehicle manufacturer from requiring a dealer to order or accept delivery of "any" new vehicle not "voluntarily" ordered, even though the dealer may have failed to exert sufficient sales effort to give the manufacturer adequate representation;

(ii) requiring that a motor vehicle manufacturer deliver to Tennessee dealers all vehicles that are publicly advertised for immediate delivery, within 60 days after ordered, even though there is a shortage in interstate commerce such as occurs when new models are first introduced; and

(iii) imposing undue restrictions upon termination of ineffective dealers and upon enfranchisement of replacement dealers and additional dealers.

(3) Whether the statute, as applied to appellant, violates the Contract Clause of the Federal Constitution and the Due Process Clause of the Fourteenth Amendment by impairing, without clear necessity the exercise of appellant's contractual right to terminate ineffective dealers.

Respectfully submitted.

CECIL SIMS
Attorney for Ford Motor Company
Cecil Sims
1000 American Trust Building
Nashville 3, Tennessee

Proof of Service

I, Cecil Sims, one of the attorneys for Ford Motor Company, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the 28th day of July, 1960, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto by mailing a copy in a duly addressed envelope with postage prepaid to the respective attorneys of record for all adversary parties, as follows:

(1) To James M. Swiggart, Special Assistant Attorney General, attorney of record for the defendants Chester R. Pace, Executive Secretary of Tennessee Motor Vehicle Commission, Carroll G. Oakes, Chairman of said Tennessee Motor Vehicle Commission, L. F. Buschman, Eugene E. Calloway, James A. Clark, Fred Mitchie, Robert Norris, J. Ivan Potts, Jr., Herbert G. Roberts, John E. Stamps, L. B. Stevens, Members of the said Tennessee Motor Vehicle Commission;

(2) To David M. Pack, Solicitor General of the State of Tennessee, as attorney of record for George F. McCanless, Attorney General of the State of Tennessee;

(3) To Tyree B. Harris, III, attorney of record for E. R. Walker, Sr. and E. R. Walker, Jr., doing business as Cocke County Motor Company;

(4) To K. Harlan Dodson, Jr., attorney of record for intervening defendant Tennessee Automotive Association;

(5) To Val Sanford, attorney of record for Tennessee Auto Auction Association, and Tennessee Independent Automobile Dealers Association.

This 28th day of July, 1960.

CECIL SIMS
Cecil Sims
1000 American Trust Building
Nashville 3, Tennessee,
Attorney for Ford Motor Company.

FILE COPY

FILED
OCT 12 1960
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

No. 431

FORD MOTOR COMPANY,
Complainant and Appellant,

v.

CHESTER R. PACE et al.,
Defendants and Appellees.

On Appeal from the Supreme Court of the State of Tennessee.

MOTION TO DISMISS THE APPEAL.

K. HARLAN DODSON, JR.,
1106 Nashville Trust Building,
Nashville 3, Tennessee,
Attorney for Defendants and Appellees.

JAMES M. SWIGGART,
HOOKER, KEEBLE DODSON & HARRIS,
Of Counsel.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4177.

INDEX

	Page
Timeliness of motion	1
Bases of motion	2
Preamble	2
I. The alleged federal question that the provisions of the statute authorizing revocation of a manufacturer's license are not valid on their face or as applied to appellant under the due process clause of the fourteenth amendment of the Federal Constitution because of either bias and prejudice against the manufacturer or pecuniary interest in the issues, as set forth in question I A (1) and (2) of the averred "federal questions presented", is not a substantial federal question	4
II. The alleged federal question that the provisions of the statute authorizing revocation of a manufacturer's license are not valid on their face or as applied to appellant under the due process clause of the fourteenth amendment of the Federal Constitution because of vagueness or uncertainty in the statutory language as set forth in question I B of the averred "federal questions presented" is not a substantial federal question	7
III. The alleged federal question that the statute involved imposes an undue burden on interstate commerce as set forth in II (a) and (b) of the averred "federal questions presented" is not a substantial federal question	9

IV. The alleged federal question that the statute in question violates the contract clause and is confiscatory in violation of the due process clause, as set forth in III of the averred "federal questions presented" is likewise not a substantial federal question 12

Conclusion 13

Cases Cited.

Bradley v. Public Utilities Commission, 289 U. S. 92.. 9

Carter v. Virginia, 321 U. S. 131..... 9

Crutcher v. Kentucky, 141 U. S. 649..... 10

Day v. North American Rayon Corporation, 140 F. Supp. 490 8

E. L. Bowen Company, Inc., v. American Motor Sales Corporation, 153 F. Supp. 42, 1957, District Court, Eastern District, Virginia..... 3,8

Hennington v. Georgia, 163 U. S. 299..... 9

Hoover Motor Express Company, Inc., v. Railroad and Public Utilities Commission, 1953, 195 Tenn. 593, 261 S. W. 2d 233..... 6

Hygrade Provision Company v. Carl Sherman, 266 U. S. 497, 502..... 8

In re: Low, 124 N. Y. Supp. 1050, affirmed in 142 App. Div. 533, 127 N. Y. Supp. 26..... 6

Kuhl Motor Company v. Ford Motor Company, 270 Wis. 488, 71 N. W. 2d 420..... 3

Long Island Water Supply Company v. City of Brooklyn, 166 U. S. 685, 688..... 7

Louisiana Motor Vehicle Commission v. The Wheeling Frenchman et al., 1958, 235 La. 332, 103 So. 2d 464, 469 3

Manigault v. Springs, 199 U. S. 473..... 12

Miller Motors v. Ford Motor Company, 149 F. Supp., 1957, District Court, Middle District, North Carolina, 790, 794 3

Moto-Pep, Inc., v. McGoldrick, 1957, 303 S. W. 2d 326 8

Nelsen v. Tilley, 1939, 137 Neb. 327, 289 N. W. 388, 126 A. L. R. 729 2

Ohio Motor Vehicle Dealers, etc., v. Memphis Auto Sales, 103 Ohio App. 347, 142 N. E. 2d 268, 275 2

Panhandle Eastern Pipe Line Company v. Michigan Public Service Commission, 341 U. S. 329 11

U. S. v. Burleson; 127 F. Supp. 400 8

U. S. v. Howell, 78 U. S. 432 8

U. S. v. Kirby, 74 U. S. 482, 486 8

Statutes Cited.

Tennessee Code Annotated:

Section 27-911 6

Section 57-1701 2

Section 59-1703 4

Section 59-1714 9

Section 59-1717 6

Textbooks Cited.

42 Am. Jur., p. 312 6

50 Am. Jur., p. 489 7

Annotation, 47 A. L. R. (N. S.) 153 6

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

No. .....

FORD MOTOR COMPANY,
Complainant and Appellant,

v.

CHESTER R. PACE et al.,
Defendants and Appellees.

On Appeal from the Supreme Court of the State of Tennessee.

MOTION TO DISMISS THE APPEAL.

The defendants move to dismiss the appeal from the State Court in this cause pursuant to Rule 16 of the Rules of this Honorable Court on the ground that the appeal does not present a substantial Federal question.

TIMELINESS OF MOTION.

The jurisdictional statement of the appellant is dated September 19, 1960, and was served on the appellees on September 20, 1960.

BASES OF MOTION.

Preamble.

The statute in question as found by the Legislature of Tennessee (Section 57-1701 of the Tennessee Code Annotated, Appendix E) and as found by the Supreme Court of the State of Tennessee (Opinion of the Supreme Court of Tennessee—Appendix A, p. 16a) and as evident from the proof in this case, was enacted under the police power of the State.

The necessity for similar laws under the police power of the states has been recognized by the States of Wisconsin, Colorado, Virginia Florida, Oklahoma, South Dakota and Michigan, where similar laws have been on the statute books of those states for many years.

The necessity for such laws under the police power of the states has been recognized by various courts in addition to the Supreme Court of Tennessee; for example, the Supreme Court of Nebraska in **Nelsen v. Tilley**, 1939, 137 Neb. 327, 289 N. W. 388, 126 A. L. R. 729, said:

> "Motor vehicles, once luxuries, are now necessities. The handling of motor vehicles has become a complex business. The sale of new automobiles is closely tied in with the purchase, trade and sale of used cars. The possibilities of fraud upon the public have correspondingly increased. The elimination of harmful trade practices and dishonest dealings resulting in injury to the purchasing public may have been, and undoubtedly was, a factor in the passage of the act. Many courts have sustained similar legislative enactments."

The Court of Appeals of Ohio in **Ohio Motor Vehicle Dealers, etc., v. Memphis Auto Sales**, 103 Ohio App. 347, 142 N. E. 2d 268, 275, said:

"True the sale of motor vehicles is affected by public interest and laws regulating their sale generally are salutary.

. . . . . .

"Certainly the legislature has the power to determine that the conduct of an agency engaged in the sale of new motor vehicles is a business affected by the public interest. This fact has been recognized by legislatures and courts throughout the country."

Similar holdings in equally strong language are found in **Louisiana Motor Vehicle Commission v. The Wheeling Frenchman et al.**, 1958, 235 La. 332, 103 So. 2d 464, 469, and **Kuhl Motor Company v. Ford Motor Company**, 270 Wis. 488, 71 N. W. 2d 420; **Miller Motors v. Ford Motor Company**, 149 F. Supp., 1957, District Court, Middle District, North Carolina, 790, 794.

In the case of **E. L. Bowen Company, Inc., v. American Motor Sales Corporation**, 153 F. Supp. 42, 1957, District Court, Eastern District, Virginia, the District Court in discussing an act similar to the Tennessee act said:

"Nor can it be said that the statutes violate the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States. In Williamson v. Lee Optical Co. of Oklahoma, 348 U. S. 483, 75 S. Ct. 461, 464, 99 L. Ed. 563, the Court said:

'The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought (citing authorities). We emphasize again what Chief Justice Waite said in Munn v. State of Illinois, 94 U. S. 113, 134, 24

L. Ed. 77, "For protection against abuses by legislatures the people must resort to the polls, not to the courts." ' ' '

Whether a substantial Federal question is presented must be considered, then, in light of the established proposition that the act in question was a valid exercise of the police power of the State of Tennessee.

I.

The Alleged Federal Question That the Provisions of the Statute Authorizing Revocation of a Manufacturer's License Are Not Valid on Their Face or as Applied to Appellant Under the Due Process Clause of the Fourteenth Amendment of the Federal Constitution Because of Either Bias and Prejudice Against the Manufacturer or Pecuniary Interest in the Issues, as Set Forth in Question I A (1) and (2) of the Averred "Federal Questions Presented", Is Not a Substantial Federal Question.

Section 59-1703 of the Tennessee Code Annotated specifically provides that the members of the Commission shall be of good moral character, and each shall have been actually engaged in the **manufacture**, distribution, or sale of motor vehicles (Appendix E, p. 30a). By the express terms of the act, manufacturers of motor vehicles such as the appellant are entitled to have representation on the Commission if requested; but no such request has been made.

An isolated sentence from the Opinion of the Supreme Court is cited to support the proposition that only dealers may serve on the Commission, but when such statement is read in its context in the opinion of the Supreme Court of Tennessee, it is apparent that such was not the Court's construction of the act, but rather a recitation of the

charge against the act made by appellant and contrary to this assertion is the express language of the statute in question.

The argument that because franchised automobile dealers serve on the Commission that the Commission is biased and prejudiced and that the members of the Commission have a pecuniary interest on the speculative supposition that they too might some day have a case before the Commission is spurious in light of every day experience. It follows the same process of reasoning as saying that no lawyer could serve on a Court hearing a disbarment case; that no doctor could serve on a grievance committee of the Medical Board considering a grievance presented by a patient of some doctor not a member of the Board; that no real estate agent could legally be a member of a real estate board considering the ethics of a deal between another real estate agent and his customer, etc. As pointed out by the Supreme Court of Tennessee in its opinion, all regulatory boards are made up of members of the profession which that board governs and the reason for the same is obvious. Adopting this same fallacious reasoning, it could be insisted with equal logical accuracy that the nonfranchised dealer members of the Commission would be biased in favor of appellant and against a franchised dealer in the hope of getting a franchise; or that both franchised and nonfranchised dealer Commissioners would have a pecuniary interest to favor the manufacturer and oppose dealers so as to alleviate competition. All such theoretical interests or prejudices are so speculative as to be ridiculous.

It is actual existence of bias or prejudice or pecuniary interest and not a mere apprehension of it which would render a commission or board or its members improper as such. That is, it must be such an interest as is direct, definite and capable of demonstration rather than one

remote, uncertain, contingent, unsubstantial or merely speculative or theoretical to be disqualifying.

42 Am. Jur., p. 312;
In re: Low, 124 N. Y. Supp. 1050, affirmed in 142 App. Div. 533, 127 N. Y. Supp. 26;
Annotation, 47 A. L. R. (N. S.) 153.

Accordingly, we submit that since appellant has failed to show any attempt to have a representative on the Commission and since no bias or prejudice, other than a remote, theoretical or speculative interest of the members of the Commission has been shown, the statute as applied to appellant evidences no deprivation of appellant's rights under the due process clause of the Fourteenth Amendment of the Federal Constitution; and since the act expressly authorizes and permits representation on the Commission from all branches of the field of automobile merchandising, to-wit, manufacturers, distributors and dealers on the Commission, certainly the act on its face does not deprive appellant of its rights under the due process clause of the Fourteenth Amendment of the Federal Constitution.

Furthermore, the act in question provides in Section 59-1717, Tennessee Code Annotated (Appendix, p. 44a) that the action of the Commission is subject to review in the Circuit Court of Davidson County as provided in Chapter 9 of Title 27 of the Tennessee Code Annotated, which provides in Section 27-911 that the hearing shall be on the proof introduced before the Commission "and upon such other evidence as either party may desire to introduce."*

* Upon such hearing the Court reviews the evidence and determines whether the Commission has acted beyond its jurisdiction or has acted arbitrarily, fraudulently or illegally.

Hoover Motor Express Company, Inc., v. Railroad and Public Utilities Commission, 1953, 195 Tenn. 593, 261 S. W. 2d 233.

Thus any action by the Commission is subject to review and if any actual bias or prejudice is shown or any actual pecuniary interest on the part of any member of the Commission or a Commissioner, such proceedings before the Commission would, obviously be set aside under such review. As has been pointed out by this Court, when an opportunity to be heard is given, the requirements of due process are satisfied, **especially when a right of review in the courts is given.**

Long Island Water Supply Company v. City of Brooklyn, 166 U. S. 685, 688.

II.

The Alleged Federal Question That the Provisions of the Statute Authorizing Revocation of a Manufacturer's License Are Not Valid on Their Face or as Applied to Appellant Under the Due Process Clause of the Fourteenth Amendment of the Federal Constitution Because of Vagueness or Uncertainty in the Statutory Language as Set Forth in Question I B of the Averred "Federal Questions Presented" Is Not a Substantial Federal Question.

As is stated by the text writer in 50 Am. Jur. at page 489:

> "A statute is not necessarily void merely because it is vague, indefinite, or uncertain, or contains terms not susceptible of exact meaning or is stated in general terms, or prescribes a general course of conduct, or does not prescribe precise boundaries or is imperfect in its details, . . . or because the intention of the legislature might have been expressed in plainer terms, and questions may arise as to its applicability, and opinions may differ in respect as to what falls

within its terms, or because the statute is difficult to execute."

Such was in effect the holding of this Court in **Hygrade Provision Company v. Carl Sherman**, 266 U. S. 497, 502.

The Supreme Court of Tennessee has defined for the Commission the rules by which it must be bound in applying the language of the act in stating as it did in the case of **Moto-Pep, Inc., v. McGoldrick**, 1957, 303 S. W. 2d 326, that words of a statute are to be taken in their natural and ordinary sense. As has been pointed out by several district courts, the meaning to be ascribed to words is to be ascertained and determined from the context so as to give affect to the legislative purpose and intent as expressed in the act (**Day v. North American Rayon Corporation**, 140 F. Supp. 490, and **U. S. v. Burleson**, 127 F. Supp. 400). And as this Court has declared, all laws should receive a sensible construction (**U. S. v. Howell**, 78 U. S. 432, and **U. S. v. Kirby**, 74 U. S. 482, 486).*

The terms complained of as being vague and uncertain when read as a part of the statute setting forth its purposes and intent are neither vague nor uncertain and when taken in their natural and ordinary meaning as ascertained and determined from the context so as to give effect to the purposes and intent of the legislature as expressed in the act have an all too definite meaning.

Hence, we submit that this alleged Federal question is not only not substantial but totally without merit.

---

* Similar holding is to be found in: Bowen v. American Motors, 1957, 153 Fed. Supp. 42.

III.

The Alleged Federal Question That the Statute Involved Imposes an Undue Burden on Interstate Commerce as Set Forth in II (a) and (b) of the Averred "Federal Questions Presented" Is Not a Substantial Federal Question.

This Court has repeatedly held that statutes passed under the admitted police power of the State and necessarily affecting interstate commerce are not for that reason alone invalid.

Hennington v. Georgia, 163 U. S. 299;
Bradley v. Public Utilities Commission, 289 U. S. 92;
Carter v. Virginia, 321 U. S. 131.

The particular features of the act challenged as infringing upon commerce are the provisions set forth in Tennessee Code Annotated 59-1714, Sections (g) (1), (h) (1), (h) (4) and (h) (5). Each of these sections was found by the Supreme Court of Tennessee to be necessary in order to effectively exercise the police power of the State. All of Section (g) has to do with coercion or attempted coercion. Coercion has always been abhorred in the law of contracts and has been repeatedly recognized by this and other courts as the basis of invalidation of the same. Certainly then the prevention of coercion in sales contracts cannot be construed an "undue" burden on interstate commerce.

Section (h) (1) can be easily avoided by the manufacturer not misleading the public by "publicly advertising for immediate delivery" its manufactured product unless such be the truth, i. e., unless they are available for immediate delivery. The prevention of the publication of untruths is certainly within the police power of the State

and does not constitute an "undue" burden on interstate commerce.

In like manner (h) (4) seeks to prevent the publication of half truths by manufacturers, i. e., the making of express warranties to be serviced by their dealers and then holding out to the public as their dealers persons who do not have the facilities to satisfy the warranties. Again, we submit that this prevention of the publication of an untrue, false and fraudulent statement is well within the police power of the State and does not constitute an "undue" burden on the floor of interstate commerce.

Section (h) (6) has to do with unfair dealings by the manufacturers and dealers. The effect of such upon the public safety of the state is well defined in the act itself, the testimony in this case and the opinions of the Tennessee court and other courts in ruling on similar laws. The prevention of unfair dealings has been recognized by all of the courts as the basis for the exercise of the police power of the State and even though commerce might be affected thereby such is not an "undue" burden, but rather is a justified regulation touching commerce.

That the operation of motor vehicles on the highways of the states has become a matter of the greatest concern insofar as the safety and health of its citizens are involved stands beyond question. As one of the means of protecting the health and safety of its citizens, the legislatures have found it necessary to provide certain rules of conduct as respects the dealings of manufacturers, distributors and dealers of such vehicles, both with the public and among themselves. Such we submit falls squarely within the rule laid down by this Court in the case of **Crutcher v. Kentucky**, 141 U. S. 649, when the Court said:

> "It is also within the undoubted province of the State Legislature to make regulations with regard to

> the speed of railroad trains in the neighborhood of cities and towns; with regard to the precautions to be taken in the approach of such trains to bridges, tunnels, deep cuts and sharp curves; and, generally, with regard to all operations in which the lives and health of people may be endangered, even though such regulations affect to some extent the operations of interstate commerce. Such regulations are eminently local in their character, and, in the absence of congressional regulations over the same subject, are free from all constitutional objections, and unquestionably valid."

These regulations therefore which the legislature and the courts of Tennessee, as well as those in other states, have found to be essential constitute no undue burden on interstate commerce, and the allegation that they do is not sufficient to bring about a substantial Federal question.

The statute complained of constitutes no prohibition against appellant doing business in Tennessee; it only requires that appellant comply with the local regulations, which are equally applicable to both interstate and intrastate business; such regulations being necessary because of the great disparity in the economic power of large corporations such as appellant here and small businessmen such as the appellee, Cocke County Motor Company. This being true, the reasoning of this Court in **Panhandle Eastern Pipe Line Company v. Michigan Public Service Commission**, 341 U. S. 329, is most apt.

IV.

The Alleged Federal Question That the Statute in Question Violates the Contract Clause and Is Confiscatory in Violation of the Due Process Clause as Set Forth in III of the Averred "Federal Questions Presented" Is Likewise Not a Substantial Federal Question.

This Court in the case of **Manigault v. Springs**, 199 U. S. 473, and other cases there cited, determined this question in clear, concise and apt language as follows:

> "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which, in its various ramifications, is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contracts between individuals. Familiar instances of this are where parties enter into contracts, perfectly lawful at the time, to sell liquor, operate a brewery or distillery, or carry on a lottery, all of which are subject to impairment by a change of policy on the part of the state, prohibiting the establishment or continuance of such traffic; in other words, that parties, by entering into contracts may not estop the legislature from enacting laws intended for the public good.
>
> "While this power is subject to limitations in certain cases, there is wide discretion on the part of the legislature in determining what is and what is not necessary—a discretion which courts ordinarily will not interfere with."

CONCLUSION.

Appellees respectfully submit that the alleged Federal questions are not substantial Federal questions for the reasons heretofore set out and in fact in most instances are no longer questions under the applicable law as declared by this Court, and accordingly this appeal should be dismissed pursuant to Rule 16 of this Honorable Court.

Dated this the 10th day of October, 1960.

Respectfully submitted,

K. HARLAN DODSON, JR.,
1106 Nashville Trust Building,
Nashville 3, Tennessee,
Attorney for Defendants
and Appellees.

JAMES M. SWIGGART,
HOOKER, KEEBLE, DODSON & HARRIS,
Of Counsel.

FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 29 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM 1960

No. 431

FORD MOTOR COMPANY,
Complainant and Appellant

against

CHESTER R. PACE, ET AL.,
Defendants and Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

BRIEF IN OPPOSITION TO MOTION TO DISMISS THE APPEAL

WILLIAM T. GOSSETT
Attorney for Ford Motor Company
Ford Motor Company
The American Road
Dearborn, Michigan

WILLIAM T. GOSSETT
L. HOMER SURBECK
WRIGHT TISDALE
RICHARD B. DARRAGH
RICHARD A. GIVENS
CECIL SIMS
Of Counsel

Dated: October 28, 1960

INDEX

	PAGE
THE FEDERAL QUESTIONS ARE SUBSTANTIAL	1
I. THE QUESTIONS PRESENTED UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT ARE SUBSTANTIAL	3
Biased Character of the Commission	3
Vagueness of Statutory Standards	6
II. THE QUESTIONS PRESENTED UNDER THE COMMERCE CLAUSE ARE SUBSTANTIAL	7
Subsection (g)(1): Affirmative Sales Effort May Not Be Required of Dealers	7
Subsection (h)(1): All Advertised Vehicles Required to be Delivered Within 60 Days of Order	8
Subsection (h)(4): Termination for Lack of Performance A Cause of License Revocation	9
Subsection (h)(6): Facilities Required Prior to Franchise	9
The Burden Upon Commerce and Repugnance to Federal Anti-Trust Policies	10
III. THE QUESTION PRESENTED UNDER THE CONTRACT CLAUSE IS SUBSTANTIAL	13
CONCLUSION	14

CASES CITED

	PAGE
Addyston Pipe & Steel Co. v. United States, 175 U. S. 211 (1899)	12
Associated Press v. United States, 326 U. S. 1 (1945)	12
Baldwin v. G. A. F. Seelig, 294 U. S. 511 (1935)	12
Berger v. United States, 255 U. S. 22 (1921)	5
Bibb v. Navajo Freight Lines, 359 U. S. 520 (1959)	10
E. L. Bowen Co. v. American Motor Sales Corp., 153 F. Supp. 42 (E. D. Va. 1957)	2
Buck v. Kuykendall, 267 U. S. 307 (1925)	12
Edwards v. California, 314 U. S. 160 (1941)	10
Fashion Originators Guild v. FTC, 312 U. S. 457 (1941)	12
General Motors v. Blevins, 144 F. Supp. 381 (D. Colo. 1956)	2
Hannah v. Larche, 363 U. S. 420 (1960)	5
Hood & Sons, Inc. v. DuMond, 336 U. S. 525 (1949)	12
Howell Chevrolet Co. v. NLRB, 346 U. S. 482 (1953)	11
Huron Portland Cement Co. v. Detroit, 362 U. S. 440 (1960)	13
Indiana ex rel. Anderson v. Brand, 303 U. S. 95 (1938)	14
R. H. Johnson & Co. v. SEC, 198 F. 2d 690 (2d Cir.), cert. denied, 344 U. S. 855 (1952)	6
Kansas City Southern R. Co. v. Kaw Valley District, 233 U. S. 75 (1914)	3
Kuhl Motor Co. v. Ford Motor Co., 270 Wis. 488, 71 N. W. 2d 420 (1955)	2
Long Island Water Supply Co. v. City of Brooklyn, 166 U. S. 685 (1897)	6
Louisiana Motor Vehicle Comm'n v. The Wheeling Frenchman, 235 La. 332, 103 So. 2d 464 (1958)	2

PAGE

Miller Motors Co. v. Ford Motor Co., 149 F. Supp. 790 (M. D. N. C. 1957) 2
Morgan v. Virginia, 328 U. S. 373 (1946) 3, 10
Munn v. Illinois, 94 U. S. 113 (1876) 12
In re Murchison, 349 U. S. 133 (1955) 4
Nelsen v. Tilley, 137 Neb. 327, 289 N. W. 388 (1939) 2
Ohio Motor Vehicle Board v. Memphis Auto Sales, 103 Ohio App. 347, 142 N. E. 2d 268 (1957) 2
Opp Cotton Mills, Inc. v. Administrator, 312 U. S. 126 (1941) 6
Panhandle Eastern Pipe Line Co. v. Michigan Public Service Commission, 341 U. S. 329 (1951) 11, 13
Parker v. Brown, 317 U. S. 341 (1943) 13
Pennsylvania R. Co. v. Rychlik, 352 U. S. 480 (1957) 5
Schwegmann Bros. v. Calvert Distillers Corp., 341 U. S. 384 (1951) 12
Southern Pacific Co. v. Arizona, 325 U. S. 761 (1945) 10, 12, 13
Ullmann v. United States, 350 U. S. 422 (1956) 13
Williamson v. Lee Optical of Oklahoma, 348 U. S. 483 (1955) 12

STATUTES CITED

15 U. S. C. § 78o-3 6
15 U. S. C. § 1221(e) 7
15 U. S. C. § 1224 13
15 U. S. C. § 1225 13
Colo. Rev. Stats. Ann. § 13-11-1 et seq. 2
Fla. Stats. Ann. § 320.60 et seq. 2

PAGE

8 Mich. Stats. Ann. §§ 9.1948-9.1951 2

Okla. Stats. Ann. 47 § 563 et seq. 2

Code of S. Dak. § 44.0211 2

Tennessee Code Annotated:

§ 59-1703 ..... 1, 3

§ 59-1714 ..... 6, 7, 8, 9, 11, 14

§ 59-1711 10

Code of Va. § 46.1—523-547 2

Wis. Stats. Ann. § 218.01 2

TEXTBOOKS AND ARTICLES CITED

Koo, A Theoretical Note on the Dealer-Manufacturer Relationship in the Automobile Industry, 73 Q. J. Econ. 316 (1959) 5

Loss, Securities Regulation (1951) 6

Palamountain, The Politics of Distribution (1955) .. 5

IN THE

Supreme Court of the United States

OCTOBER TERM 1960

FORD MOTOR COMPANY, *Complainant and Appellant,* —*against*— CHESTER R. PACE, ET AL., *Defendants and Appellees.*	Docket No. 431

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

BRIEF IN OPPOSITION TO MOTION TO DISMISS THE APPEAL

The Appellees having moved to dismiss the appeal in this cause pursuant to Rule 16, on the ground that the appeal does not present a substantial Federal question, said motion being dated October 10, 1960; and having been served upon appellant on October 11, 1960, appellant respectfully submits as follows in opposition to said motion:

THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

As indicated in the "Preamble" (Motion, p. 2), Appellees' motion proceeds upon the assumption that the prevalence of regulation by states of the sale of motor vehicles under the police power sustains the validity of the "similar" Tennessee act. Both the factual premise and the logic of the conclusion are fallacious.

The statutes of the states referred to by Appellees (M., p. 2) are not similar. None of them establishes a tribunal whose members must be drawn from a list submitted by a private group of automobile dealers to adjudicate manufacturer-dealer disputes, as does § 59-1703 of the Tennessee Act.

The Michigan statute* does not regulate manufacturer-dealer relationships at all. Although the statutes** in the other states referred to by Appellees (M., p. 2) contained provisions dealing with manufacturers, Appellees cite only two cases (*Kuhl Motor Co. v. Ford Motor Co.*, 270 Wis. 488, 71 N. W. 2d 420 (1955) and *E. L. Bozeen Co. v. American Motor Sales Corp.*, 153 F. Supp. 42 (E. D. Va. 1957)) involving those provisions. The *Kuhl* and *Bozeen* cases upheld provisions limiting termination of dealer franchises. But in neither of these cases did the court pass upon the issues presented here of (a) invalidity of a tribunal composed of and selected by dealers to adjudicate manufacturer-dealer disputes, (b) undue burden upon interstate commerce, and (c) retroactive impairman of contractual rights to effective sales representation in violation of the Contract Clause.

In every other case*** cited by Appellees involving a state statute, the court was concerned only with the licens-

---

*8 Mich Stats. Ann. §§ 9.1948-9.1951.

**Wis. Stats. Ann. § 218.01 et. seq.; Code of Va. § 46.1-523, 547; Colo. Rev. Stats. Ann. § 13-11-1 et. seq.; Fla. Stats. Ann. § 320.60 et. seq.; Okla. Stats. Ann. 47 § 563 et. seq.; Code of S. Dak. § 44.0211.

Although Appellees refer to Colorado, they fail to cite *General Motors Corp.* v. *Blevins*, 144 F. Supp. 381 (D. Colo. 1956), in which the provisions of the Colorado statute purporting to regulate manufacturers were held invalid. No appeal was taken from that decision.

***In *Ohio Motor Vehicle Board* v. *Memphis Auto Sales*, 103 Ohio App. 347, 142 N. E. 2d 268 (1957), cited by Appellees (M., p. 2) the court *struck down* a statutory requirement that in order to lawfully sell new vehicles a dealer must be franchised by a manufacturer, relying upon the similar holding in *Nelson* v. *Tilley*, 137 Neb. 327, 289 N. W. 388 (1939). The portions of that opinion quoted by Appellees (M., p. 2) related only to licensing of dealers to promote law enforcement. *Louisiana Motor Vehicle Comm'n* v. *The Wheeling Frenchman*, 235 La. 332, 103 So. 2d 464 (1958) upheld provisions prohibiting the sale and registration of vehicles as new and unused except by licensed and franchised dealers. *Miller Motors Co.* v. *Ford Motor Co.*, 149 F. Supp. 790 (M. D. N. C. 1957) cited by Appellees (M., p. 3) was a suit under the Federal anti-trust laws and involved no state statute having any relation to the Tennessee Act whatever.

ing of motor vehicle dealers. Those cases obviously have no application here.

Furthermore, as this Court has repeatedly pointed out, a State cannot avoid the operation of constitutional guarantees "* * * by simply invoking the convenient apologetics of the police power." *Morgan* v. *Virginia*, 328 U.S. 373, 380 (1946), quoting *Kansas City Southern R. Co.* v. *Kaw Valley District*, 233 U.S. 75, 79 (1914) (in the context of the Commerce Clause). Here, substantial Federal rights under the Due Process Clause, the Commerce Clause, and the Contract Clause are infringed by the statute under review.

I. THE QUESTIONS PRESENTED UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT ARE SUBSTANTIAL.

Biased Character of the Commission

In an effort to overcome the biased nature of the tribunal established to adjudicate manufacturer-dealer disputes, Appellees assert (M., p. 4) that "by the express terms of the Act" (§ 59-1703), manufacturers, as well as dealers, would be eligible to serve on the Tennessee Motor Vehicle Commission *"if requested"*. But the statute does not so provide; indeed, the specific provision of § 59-1703 is to the contrary. Eligibility is expressly limited to candidates selected from a list submitted by the Tennessee Automotive Association, a private group of automobile dealers (See Appendix L to Statement as to Jurisdiction, p. 58a). Eligibility by request of the candidate is foreclosed.

Even apart from the contrary wording of the statute, it would have been idle for Appellant to have made a request to this Association for the inclusion of a representative number of, or indeed any, manufacturers on the Commission. The Association has regarded its obligation under the statute

to be the submission of a list composed exclusively of dealers. (Appendix M to Statement as to Jurisdiction *passim*). In accord is what the Motion to Dismiss (p. 4) calls an "isolated sentence" from the Opinion of the Court below, which reads:

> "A rather vicious attack is made upon the Section of the Act (59-1703) *which makes* the Commission consist solely of dealers who are selected by the Governor from a list submitted by the Tennessee Automotive Association * * *" (emphasis added).

The context (Appendix A to Statement as to Jurisdiction, p. 12a) shows that this was the construction and interpretation of the statute upon which the Court below proceeded.

It is futile to conjecture whether, despite every outward appearance of prejudice, it would be possible for a tribunal composed exclusively of dealers, and primarily of franchised new car dealers, to be in fact objective and impartial in the adjudication of disputes between automobile manufacturers and dealers.

First, actual prejudice on the part of the Association is revealed its resolutions (see Appendix M to Statement as to Jurisdiction, p. 68a); the prejudice of the Hearing Examiner is evident from his testimony.*

Second, due process is not satisfied by any conjecture as to whether the tribunal, despite outward appearances, might in fact be impartial. As stated by this Court in *In re Murchison*, 349 U. S. 133, 136 (1955): "* * * to perform its high function in the best way, 'justice must satisfy the appearance of justice' *Offutt* v. *United States*, 348 U. S. 11, 14."

Appellees attempt (M., p. 5) to justify the creation of a biased tribunal under the Tennessee statute by analogy to regulatory boards for the self-government of various

*Appendix K to Statement as to Jurisdiction, p. 56a.

professions, such as law and medicine. But the analogy is false. The regulation here under attack is not *self government* by either manufacturers or dealers. Instead, it is regulation *of manufacturers by dealers* on matters in which the dealers' interests are in conflict with those of both manufacturers* and consumers.

Indeed, as recognized by the Association (Appendix M to statement as to jurisdiction, p. 68a), the primary function of the Commission is the adjudication of disputes between manufacturers and dealers. This makes applicable the principles stated by this Court in *Hannah* v. *Larche*, 363 U. S. 420, 442 (1960): "* * * When governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have been traditionally associated with the judicial process * * *." Those procedures include the right to a tribunal which is impartial and furthermore satisfies the appearance of justice.

The limited judicial review provided by the Tennessee statute is plainly inadequate to assure due process because such review cannot protect against bias for two reasons:

First, the statutory review is not on the merits. Instead, as Appellees must admit (M., p. 6, footnote), the reviewing court merely "* * * reviews the evidence and determines whether the Commission has acted *beyond its jurisdiction* or has acted *arbitrarily, fraudulently or illegally*." (emphasis added).

Second, as this Court pointed out in *Berger* v. *United States*, 255 U. S. 22, 36 (1921) and recognized in *Pennsyl-*

*That there are differences of opinion between manufacturers and dealers concerning the traditional disputes between them is a well accepted fact of common knowledge. See Appendices F, I, and K to Statement as to Jurisdiction; Palamountain, *The Politics of Distribution*, 148, 151 (1955); Kuss, *A Theoretical Note on the Dealer-Manufacturer Relationship in the Automobile Industry*, 73 Q. J. Econ. 316 (1959).

vania R. Co. v. Rychlik 352 U. S. 480, 496 (1957), even a full judicial review on the merits—indeed any form of appeal—is inadequate to correct bias on the part of the original tribunal in an adjudicatory proceeding.

In *Long Island Water Supply Co. v. City of Brooklyn*, 166 U. S. 685 (1897), cited by appellees (M., P. 7), no claim of probability of bias on the part of the commissioners was involved.*

For these reasons, the biased nature of the Commission violates the standards set forth in the decisions of this Court cited in the Statement as to Jurisdiction (pp. 12-15) and presents a substantial Federal question.

Vagueness of Statutory Standards

The vagueness of the statutory standards also presents a substantial Federal question.

The words "unfairly, without due regard for the *equities of said dealer* and without just provocation" in § 59-1714(h)(4) (emphasis added) have no natural and ordinary meaning which gives Appellant guidance as to when termination or failure to renew a dealer's franchise is a cause of revocation of its license to do business in the State.

There is also no forseeable limit to the application of the terms "coerced *or attempted to coerce*" a dealer to order

*The kind of situation, not present here, where review may cure defects in the proceedings below is illustrated by *Opp Cotton Mills, Inc. v. Administrator*, 312 U. S. 126 (1941), not cited by Appellee. There the action of an industry committee as to minimum wages was merely advisory and dealt with a formulation of *general standards or rules*, rather than adjudication of specific cases and the imposition of adverse legal consequences as here. On review, an impartial Administrator had complete discretion to accept or reject the recommendations of the committee on the basis of his own independent judgment after his own full investigation and hearing on the merits, which is absent here. In *R. H. Johnson & Co. v. SEC*, 198 F. 2d 690, 695 (2d Cir. 1952), cert. denied, 344 U. S. 855 (1952), also not cited by Appellee, the tribunal was not biased and the review was plenary and on the merits, and further, no governmental sanctions could be imposed by the tribunal. See 15 U. S. C. § 78o-3; Loss, *Securities Regulation* 769-70 (1951).

"any" vehicles not "voluntarily" ordered under § 59-1714(g)(1) (emphasis added). Even "salesmanship" might constitute coercion in this context. The vagueness of this statutory provision is brought out by the sharp contrast with the Federal Automobile Dealers Franchise Act which specifically provides that "recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith." 15 U. S. C. § 1221(e).

The impact of the vagueness of these provisions is aggravated by the biased nature of the tribunal and the severity of the penalty which it is authorized to impose.

II. THE QUESTIONS PRESENTED UNDER THE COMMERCE CLAUSE ARE SUBSTANTIAL.

Examination will show that each of the provisions of the statute defended by Appellees in the Motion to Dismiss imposes an undue burden upon interstate commerce, and that the statute restricts the volume of interstate commerce in order to grant a preferential position to local economic interests, in violation of the purposes of the Commerce Clause and in conflict with the policies of the Federal antitrust laws.

Subsection (g)(1): Affirmative Sales Effort May Not Be Required of Dealers

The franchised automobile dealer secures important advantages from his dealership. The dealer is enabled to buy new automobiles at a price less than that charged to the general public; his authority to use the name of the manufacturer imposes a practical limitation on the manufacturer's ability to attract other dealers to do business in the same area if necessary to promote sales. In return for these advantages, the dealer undertakes actively

to promote sales within his area. (See Appendix P to Statement as to Jurisdiction, p. 81a).

The manufacturer is solely dependent on the dealer for effective sales representation. Yet § 59-1714(g)(1) makes it a cause of license revocation for a manufacturer to "coerce" a Tennessee dealer to order or accept "any" vehicles not "voluntarily"* ordered.

Appellees contend that (g)(1) deals only with "coercion" which "has always been abhorred in the law of contracts". (M., p. 9) But the impact of "coercion" depends upon the circumstances. Here, (g)(1) precludes the manufacturer from requiring a Tennessee dealer to order "any" vehicles not "voluntarily" ordered, in spite of the fact that the dealer has agreed under his franchise to order sufficient vehicles to carry out his obligation to represent the manufacturer. The Tennessee dealer is thus freed from his return obligation to promote sales and provide effective representation for the manufacturer,** thereby imposing a severe restriction upon interstate commerce.

Subsection (h)(1): All Advertised Vehicles Required to Be Delivered Within 60 Days of Order

Subsection (h)(1), requiring the manufacturer to deliver within 60 days any vehicle ordered by a Tennessee dealer which is publicly advertised for immediate delivery, would require motor vehicle manufacturers to disrupt nation-wide methods of distribution, thereby imposing an undue burden upon interstate commerce.

---

*The statute of no State referred to by Appellee (M., p. 2) has been found containing this language nor committing its enforcement to commissioners drawn from a list submitted by a private group.

**An analogy would be the situation of an employer required to continue employees on his payroll and to give them all the work they might desire (compare § 59-1714(h)(1)) but unable to require them to do "any" work which they did not "voluntarily" decide to do (compare § 59-1714(g)(1)), and unable to terminate his relationship with them for lack of performance (compare § 59-1714(h)(4)).

National motor vehicle advertising can not state the length of time required for delivery for each vehicle ordered. Obviously, some vehicles are available for immediate delivery at the beginning of a season; more become available as manufacture progresses. In order to sell these vehicles, and to begin the distribution of a new model, it is essential that advertising show that some vehicles are available. The advertising contains no misrepresentation, there being no expressed or implied statement that every customer may receive the vehicle ordered by him with no waiting period.

Subsection (h)(4): Termination For Lack of Performance A Cause of License Revocation

Subsection (h)(4) makes it a cause for license revocation for a manufacturer to fail to renew a franchise or selling agreement "without just provocation". In conjunction with (g)(1) (making it clear that a manufacturer cannot require a dealer to "order or accept delivery of any motor vehicle" not "voluntarily" ordered), this precludes the manufacturer from insisting that a dealer make any affirmative sales effort as a condition to renewal or continuance of his franchise. The reference to "equities of said dealer" in subsection (h)(4) tends to restrain interstate commerce by freezing existing channels of distribution. Reference to "equities" of the dealer was deleted from the bill which became the Federal Act in order to avoid any interpretation inconsistent with antitrust principles. (See Statement as to Jurisdiction, p. 23-25).

Subsection (h)(6): Facilities Required Prior to Franchise

Subsection (h)(6) does not merely seek to insure that a franchised dealer have adequate facilities after he is appointed; it requires adequate facilities (as judged by the Commission composed of existing dealers) *"at the time of the franchise agreement"*. (emphasis added) This severely

restricts the opportunity for new dealers to enter the field, because it would be extremely risky to invest in new facilities before knowing (a) that a franchise would be granted by the manufacturer, and (b) that the Motor Vehicle Commission composed of existing dealers would grant a license to the new competitor under § 59-1711, which requires information, even before the license is granted, relating to "* * * whether the applicant has an established place of business and is primarily engaged in the pursuit, advocation or business for which a license is applied * * *". (emphasis added). This prejudices Appellant by restricting its opportunity to secure new dealers if the existing dealers, shielded by § 59-1714(g)(1), fail to provide effective sales representation.

The Burden Upon Commerce And Repugnance to Federal Antitrust Policies

State regulation of interstate commerce which imposes so severe a burden upon interstate activities without clear necessity to do so to protect local needs has been subjected to exacting judicial scrutiny under the Commerce Clause, even though the burden does not take the classic form of protecting local products from competition by out-of-state products. This is exemplified by such cases as *Bibb* v. *Navajo Freight Lines*, 359 U. S. 520 (1959) (state truck mudguard requirements differing from those of other states so as to impose severe burden); *Morgan* v. *Virginia*, 328 U. S. 373 (1946) (state requirement for separation of seating in interstate transportation on basis of race); *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761 (1945) (state limit upon length of trains engaged in interstate journeys); *Edwards* v. *California*, 314 U. S. 160 (1941) (interstate movement of persons restricted for local economic reasons). The present case is analogous to these cases because, like them, it concerns the arteries or gateways through which commerce must flow.

Sales to dealers are the channels of interstate distribution through which appellant's interstate commerce must flow on the way to ultimate consumers in Tennessee. See *Howell Chevrolet Co. v. NLRB*, 346 U. S. 482 (1953).

Panhandle Eastern Pipe Line Co. v. Michigan Public Service Commission, 341 U. S. 329 (1951), cited by Appellees (M:, p. 11), merely held that the State could require that interstate gas sales be channeled through a state-licensed utility. A contrary holding would have permitted the interstate pipeline to refuse to deliver gas to the local utility and, instead, run duplicating pipes under the streets of the locality against state wishes, resulting in higher total costs and higher ultimate charges to the consumer.

There was no issue concerning restriction of the volume of commerce in *Panhandle*. The local utility was prepared to distribute as much gas as the interstate pipeline itself:

> "* * * There is no intimation that appellant cannot deliver and sell available gas to [the local certificated utility] for resale to customers who have additional gas requirements * * *". 341 U. S. at 336.

Here, by contrast, one of the chief functions of the dealer is the active solicitation of business; yet § 59-1714(g)(1) makes it a cause for license revocation for appellant to insist that its distributors accept or purchase and sell "any" vehicles which are not "voluntarily" ordered. The Tennessee statute delegates to the dealer complete control of the volume of interstate commerce which he may be required to seek to generate, at the same time limiting entry into the field. It thus permits the dealers to determine the volume of interstate commerce so as to maximize their own return, in effect acting as a tollgate across the arteries of interstate distribution.

This is not regulation by the state in the interest of the public as in *Panhandle*. It is state-authorized regulation by

dealers in the interest of dealers and to the detriment of the public.

Even beyond this, the administration of the entire statutory scheme is committed to a body drawn from a list submitted by a private group of existing dealers.

Here, as in *Associated Press* v. *United States*, 326 U. S. 1, 19 (1945), *Fashion Originators Guild* v. *FTC*, 312 U. S. 457, 465 (1941), and *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 242 (1899), a private body has assumed power to regulate interstate commerce which "* * * trenches upon the power of the national legislature * * *".

The result, which is comparable to the medieval guild system of industrial regulation, constricts the volume of interstate commerce in order to grant a preferential position to local economic interests as in *Hood & Sons, Inc.* v. *Du-Mond*, 336 U. S. 525, 530-39 (1949), *Baldwin* v. *G. A. F. Seelig*, 294 U. S. 511 (1935), and *Buck* v. *Kykendall*, 267 U. S. 307, 316 (1925).*

There are limits to the extent to which a state may authorize private conduct otherwise forbidden by the Federal antitrust laws. These limits are transgressed here by the vast powers conferred upon a Commission whose members must be drawn exclusively from a list submitted by a private group. The situation is comparable to *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U. S. 384, 386

*Appellees quote (Mo. p. 34) the statements of this Court that "For protection against abuses by legislatures the people must resort to the polls, not to the courts." *(Williamson* v. *Lee Optical of Oklahoma*, 348 U. S. 483, 488 (1955), quoting *Munn* v. *Illinois*, 94 U. S. 113, 134 (1876)), but they overlook that, as pointed out by Chief Justice Stone in *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 767-68 n. 2 (1945):

> "* * * the Court has often recognized that to the extent that the burden of State regulation falls on interests outside the State, it is unlikely to be alleviated by the operation of those political restraints normally exerted when interests within the State are affected [citing many cases]."

(1951), where this Court said "* * * The fact that a state authorizes the price fixing does not, of course, give immunity to the scheme, absent approval by Congress."

In the *Parker* case there were "* * * no opposing directives and hence no necessity * * * to resolve any conflicting claims as between state and federal regulation." 341 U. S. at 330. By contrast, in this case, the Federal Automobile Dealers Franchise Act of 1956 provides (15 U.S.C. § 1224) that "No provision of this chapter shall repeal, modify, or supersede, *directly or indirectly*, any provision of the antitrust laws of the United States." (emphasis added). The Tennessee statute is in "direct conflict" (See 15 U.S.C. § 1225) with this reaffirmation of antitrust principles, a reaffirmation which together with the national policies declared in the Sherman Act is most pertinent to the balancing of the conflicting local and National interests involved under the Commerce Clause, as is shown by the weight accorded to relevant federal statutes in the Commerce Clause cases of *Huron Portland Cement Co.* v. *Detroit*, 362 U. S. 440, 446 (1960), *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 773 (1945) and *Parker* v. *Brown* 317 U. S. 341, 367 (1943).

III. THE QUESTION PRESENTED UNDER THE CONTRACT CLAUSE IS SUBSTANTIAL.

This Court has said that "* * * Nothing new can be put into the Constitution except through the amendatory process. Nothing old can be taken out without the same process. * * * As no constitutional guarantee enjoys preference, so none should suffer subordination or deletion. * * *" *Ullmann* v. *United States*, 350 U. S. 422, 428 (1956). If the Contract Clause of Article I, § 10 retains any effective meaning, it must at least prohibit retroactive impairment of contractual obligations by a state statute designed to aid the interests of one contracting party at the expense of the other, where this is not justified by any emergency or

other overriding public interest. This is the criterion laid down in *Indiana ex rel. Anderson v. Brand*, 303 U. S. 95, 108-09 (1938).

Under his franchise agreement (Appendix P to Statement as to Jurisdiction, p. 81a), the complaining dealer assumed the obligation to provide effective sales representation, and further agreed that the manufacturer should have the right to terminate the relationship in the event of the dealer's failure to do so.

As demonstrated in the Statement as to Jurisdiction, and in this Brief, the Tennessee statute (§ 59-1714(g)(1), (h)(4)) retroactively impairs the obligation of both of these franchise provisions. It relieves the dealer of his obligation to order enough vehicles to provide effective representation. It deprives the manufacturer of his right to terminate relations with a non-performing dealer.

CONCLUSION

Appellant respectfully submits that the Federal questions presented by this appeal are substantial, that Appellees' motion to dismiss should be denied and that probable jurisdiction should be noted.

Respectfully submitted,

WILLIAM T. GOSSETT
Attorney for Ford Motor Company
Ford Motor Company
The American Road
Dearborn, Michigan

WILLIAM T. GOSSETT
L. HOMER SURBECK
WRIGHT TISDALE
RICHARD B. DARRAGH
RICHARD A. GIVENS
CECIL SIMS
Of Counsel

Dated: October 28, 1960.

FILE COPY

Office-Supreme Court, U.S.
FILED
DEC 15 1960
CLERK

In the

Supreme Court of the United States

October Term 1960

No. 431

FORD MOTOR COMPANY,
Complainant and Appellant

against

CHESTER R. PACE, ET AL.,
Defendants and Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

PETITION FOR REHEARING

WILLIAM T. GOSSETT
Attorney for Ford Motor Company
Ford Motor Company
The American Road
Dearborn, Michigan

WILLIAM T. GOSSETT
L. HOMER SURBECK
WRIGHT TISDALE
RICHARD E. DARRAGH
RICHARD A. GIVENS
CECIL SIMS
Of Counsel

Dated: December 9, 1960

INDEX

	PAGE
STATEMENT	1
PRESENTATION OF FEDERAL QUESTIONS	3
I. Under the Due Process Clause	3
A. Bias of Tribunal	4
B. Vagueness and Indefiniteness	4
II. Under the Commerce Clause	5
III. Under the Contract Clause	7
The Federal Questions Were Presented to and Passed Upon by the State Court	8
RIPENESS FOR ADJUDICATION HERE	8
CONCLUSION	13
CERTIFICATE OF COUNSEL	15
EXHIBITS	16
1. Federal Questions Presented in Notice of Appeal and Jurisdictional Statement	16
2. Extracts from Trade Publications	18

CASES CITED

Chicago v. Atchison, T. & S. F. Ry., 357 U. S. 77 (1958)	12
Huron Portland Cement Co. v. Detroit, 362 U. S. 440 (1960)	11
Public Utilities Commission of California v. United States, 355 U. S. 534 (1958)	10
Rescue Army v. Municipal Court, 331 U. S. 549 (1947)	8, 12, 14
Thornhill v. Alabama, 310 U. S. 88 (1940)	11
Ex Parte Young, 209 U. S. 123 (1908)	11

IN THE

Supreme Court of the United States

October Term 1960

FORD MOTOR COMPANY, *Complainant and Appellant,* *—against—* CHESTER R. PACE, *et al.*, *Defendants and Appellees.*	No. 431

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

PETITION FOR REHEARING

For its petition for rehearing, appellant respectfully shows to this Honorable Court:

Statement

Appellant brought suit in a state Chancery Court for an injunction prohibiting the Tennessee Motor Vehicle Commission from proceeding with a hearing on a dealer's complaint against appellant pursuant to the Tennessee Motor Vehicles Sales Licenses Act, § 59-1701 to § 59-1720 T. C. A., and for judgment declaring the statute invalid as violative of both the Federal and State Constitutions.

The Chancellor held the statute invalid under the State Constitution. The Supreme Court of Tennessee reversed and upheld the statute under both Federal and State Constitutions.

Appeal was taken to this Court. Respondents moved to dismiss on the ground that the appeal did not present a substantial Federal question.

On November 21, 1960, this Court dismissed the appeal as follows:

> "The motion to dismiss is granted and the appeal is dismissed for want of a properly preserved federal question."

Your petitioner is uncertain whether this Court intended to indicate that the presentation of the Federal questions before the State Court was not sufficiently demonstrated in the Jurisdictional Statement, or that the Federal questions were not ripe for adjudication here.

Accordingly, the first portion of this petition will demonstrate that the Federal questions, as set forth in the Notice of Appeal and Jurisdictional Statement (such Federal questions being shown in Exhibit 1 to this Petition), were properly presented to and passed upon by the State Court. The second portion, beginning on p. 8, will show that these questions are ripe for adjudication here.

It is therefore respectfully submitted that this petition for rehearing should be granted and that probable jurisdiction should be noted.

Reconsideration is important for the further reason that this Court's order apparently has been interpreted by a dealer association and a trade publication as indicating that the statute is valid on the merits. These interpretations accordingly have predicted enactment of similar legislation

in other states on the assumption that no substantial Federal question is involved.*

PRESENTATION OF FEDERAL QUESTIONS

I

Under The Due Process Clause

The Supreme Court of Tennessee recognized that Federal questions under the Due Process Clause had been presented:

> "The basic argument is that the Act is an invalid exercise of the police power of the State, * * * and consequently it is inimical to the due process clauses

*Thus, the December 5, 1960 issue of Automotive News stated (under the heading "State Laws Reaffirmed"):

> "By refusing to upset the stringent Tennessee law, the Supreme Court has swept away a cloud of uncertainty which had left the 18 state regulations largely unenforceable.
>
> * * *
>
> "Pending a U. S. Supreme Court determination on state factory-practices laws, dealer associations in many non-control states had declined to ask their legislatures for similar enactments. The Court's implied affirmation of the state regulations is expected to pave the way for a rash of proposals across the country at legislative sessions next year."

The November 28, 1960 issue of the same publication stated:

> "The United States Supreme Court has for the first time affirmed the right of the states to impose stringent controls on 'factory-dealer relations.'"

Another publication, Tennessee Automotive Association Bulletin #40-60, on November 28, 1960, stated:

> "The Supreme Court's ruling was handed down upon the basis that no substantial Federal question was presented in the appeal which would permit the Supreme Court to take jurisdiction.
>
> "TAA is advised by a major Detroit automotive publication that other states not having similar enactments, which have been awaiting a ruling in the Ford-Tennessee case, will now press forward with Tennessee type legislation."

The items from which the foregoing excerpts were taken are appended in full as Exhibit 2 on pages 18-23 of this petition.

of * * * the 14th Amendment to the Constitution of the United States. * * *" (Appendix A to Jurisdictional Statement, p. 2a)

A. Bias of Tribunal

Appellant's complaint in the Chancery Court alleged that the Act was void under the 14th Amendment because it violated procedural due process of law.

> "* * * by vesting quasi judicial powers in a commission inherently biased by the mandatory qualifications for appointment, thereby permitting automobile dealers to sit in judgment upon * * * the action of a manufacturer * * * in * * * disputes between dealers and manufacturers." (Appendix G to Jurisdictional Statement, p. 51a)

This issue was specifically passed upon by the Supreme Court of Tennessee as follows:

> "A rather vicious attack is made upon the Section of the Act (59-1703) which makes the Commission consist solely of dealers who are selected by the Governor from a list submitted by the Tennessee Automotive Association. The argument is * * * that by the very nature of a Board thus made up, the Board is biased and partial. It is said such a non-judicial body which exercises at least quasi-judicial functions should not be allowed. We think the attack on this Section of the Act is entirely unjustified. * * *" (Appendix A to Jurisdictional Statement, p. 12a)

B. Vagueness and Indefiniteness

The impact of the biased character of the tribunal is aggravated by the vague and indefinite criteria for license revocation. Appellant's complaint in the Chancery Court therefore alleged that the Act denied procedural due process

under the 14th Amendment by authorizing revocation of appellant's license:

> "* * * upon grounds which are stated with such generality, and without statutory definition so as to apprise complainant and others of the conduct sought to be condemned thereby, and of the acts prohibited by said statute and made criminal violations by its terms." (Appendix G to Jurisdictional Statement, p. 50a; quotation from subparagraph 6; see also subparagraph 7, pp. 50a-51a).

The Supreme Court of Tennessee dealt specifically with this Federal question as follows:

> "It is argued very forcibly that the Act is so vague in its terms that it violates procedural due process. * * *
>
> * * *
>
> "* * * the briefs argue that the Act does not provide or furnish any ascertainable standards upon which the Commission would act, and criticize the terms 'the act of coercing', 'threatening to cancel any franchise', 'as unfairly', 'without due regard to the equities of said dealer', and 'without just provocation', and such statements as are in Section 59-1714. We have carefully, as we have said before, read and re-read some two or three times the specific provisions of this Act and it seems to us that the application of these terms objected to can be fairly administered by the Commission in applying the ordinary meaning of such terms to them. * * *" (Appendix A to Jurisdictional Statement, p. 11a)

II

Under The Commerce Clause

The Supreme Court of Tennessee expressly recognized that appellant had presented a Federal question under the Commerce Clause. After sustaining each provision for rev-

ocation of license as a valid exercise of the police power of the State under the due process clauses of the State and Federal Constitutions, and under state constitutional provisions prohibiting class legislation and monopolies, the Court said:

> "The same reasoning, above, applies to the attack on the Act in that it constitutes a burden on interstate commerce. * * *" (Appendix A to Jurisdictional Statement, p. 8a).

Furthermore, the Federal question under the Commerce Clause was raised in appellant's complaint in the Chancery Court. In paragraph IV* of its complaint appellant alleged:

> "* * * that under the provisions of said Act manufacturers such as complainant desiring to sell and ship *motor vehicles* * * * *in interstate commerce* in the State of Tennessee must first be licensed by said Commission composed of such dealers. * * *
>
> "Complainant further avers that Section *59-1714* of said law purports to authorize said Commission to *revoke* or suspend a license previously granted, including that which the complainant avers has heretofore been granted to it as a manufacturer and distributor of *such* motor vehicles and other products in Tennessee. * * *" (Emphasis added) (Contained in record transmitted to this Court but not quoted in Jurisdictional Statement)

The Supreme Court of Tennessee specifically sustained the Act as a whole under the Commerce Clause by holding that:

---

*In paragraph VII of the complaint in the Chancery Court appellant also alleged (Appendix G, p. 51a) that the provisions of § 59-1701 through § 59-1720, inclusive, of the Act are unconstitutional for the following reasons among others:

"8. The provisions of said Act purport to require complainant * * * to obtain state licenses before conducting its interstate business in the State of Tennessee and thereby imposes unlawful burdens and restrictions on interstate commerce and are *repugnant to Article I, Section 8 of the Constitution of the United States.*" (Emphasis added)

> "* * * The Act applies to all alike, whether they are out of the State or in the State, so long as they are doing business here, and, this being true, it is not a burden on interstate commerce." (Appendix A to Jurisdictional Statement, p. 8a-9a)

This ruling explicitly upheld the entire Act under the Commerce Clause. The breadth of the ruling is further confirmed by the fact that, in passing upon the issue of burden upon commerce, the Supreme Court of Tennessee necessarily had before it the impact of the statute upon commerce as pointed out by the Chancellor:

> "* * * Limiting the right of manufacturers to weed out inefficient dealers * * * could certainly harm the public. * * * The denial or revocation of the license of a manufacturer for whatever reason would have the result of completely shutting off the opportunity of the public to buy its motor vehicles in the State. * * *" (Appendix D to Jurisdictional Statement, p. 24a)

III

Under The Contract Clause

The Federal question presented under the Contract Clause was first raised by a petition for rehearing in the Supreme Court of Tennessee which was entertained and denied on the merits on May 4, 1960,* the Court stating:

> "The insistences * * * made are that the Act * * * is contrary * * * to Article I, Section 10 of the Constitution of the United States, in that as we have construed the Act it constitutes * * * a law which impairs the obligation of contracts, entered into and existing prior to the passage of the legislation. We are unable to perceive these infirmities." (Appendix B to Jurisdictional Statement, p. 18a)

*The notice of appeal (Appendix Q to Jurisdictional Statement) was filed within 90 days thereafter, on July 28, 1960. The appeal is therefore timely.

The Federal Questions Were Presented to and Passed Upon By The State Court

For these reasons, it is respectfully submitted that the Federal questions as to the invalidity of the statute under the Due Process Clause, the Commerce Clause and the Contract Clause were properly presented to and passed upon by the highest Court of the State of Tennessee, and that these questions are properly before this Court on appeal under 28 U. S. C. § 1257(2).

RIPENESS FOR ADJUDICATION HERE

Since the Federal questions were properly presented to and passed upon by the State Court, it appears that the dismissal of the appeal might have rested upon the ground that the factual context was not demonstrated to be sufficiently concrete under the principles laid down in *Rescue Army* v. *Municipal Court*, 331 U. S. 549 (1947).

It is submitted, however, that the *Rescue Army* case is inapposite since here the facts relevant to a decision on the validity of the statute under review plainly appear on the face of the statute or are clearly established by documentary evidence and uncontradicted testimony:

(a) the members of the Tennessee Motor Vehicle Commission were, as required by § 59-1703, T. C. A., drawn exclusively from a list submitted by the Tennessee Automotive Association, a private group primarily composed of Tennessee new automobile dealers (see Appendix L to Jurisdictional Statement, p. 58a).

(b) the Association stated in its minutes that it was:

"* * * charged with the duty of submitting the names of at least 20 *automobile dealers* * * * from

which the Governor will appoint the Tennessee Motor Vehicle Commission * * *." (Emphasis added) (Appendix M to Jurisdictional Statement, p. 60a).

(c) the Association did submit to the Governor lists composed exclusively of Tennessee motor vehicle dealers. (Appendix M to Jurisdictional Statement, p. 60a-71a).

(d) the Commission therefore consists exclusively of such dealers (see Appendix L to Jurisdictional Statement, p. 59a).

(e) the franchise of the dealer complaining to the Commission in this case was terminated by appellant for insufficient sales effort (see Appendix O to Jurisdictional Statement, p. 73a-79a) pursuant to the terms of his franchise agreement entered into before the effective date of the Act (Appendix P to Jurisdictional Statement, p. 81a).

(f) the Commission, composed of existing dealers, has served appellant with a notice (Appendix J to Jurisdictional Statement, p. 55a) of hearing to adjudicate the dispute between the complaining dealer and appellant under statutory standards which make it a cause of license revocation to terminate a dealer's franchise "unfairly without due regard to the equities of said dealer and without just provocation" (§ 59-1714(h)(4)).*

*This is in sharp contrast to the situation in which professional bodies in such fields as law and medicine *pass upon the conduct of members of their own profession*. The Tennessee Commission, composed entirely of dealers, regulates not merely other dealers but also manufacturers.

Neither bar associations nor medical societies can penalize a patient or client for unjustified discharge of his doctor or lawyer. The Commission, composed of dealers, however, is about to consider penalizing appellant for alleged unjustified termination of a dealer's franchise.

(g) the statute provides that "* * * if the Commission shall determine that any licensee is guilty of violation of this chapter, his or its license *shall be suspended or revoked.*" (Emphasis added) § 59-1715.

(h) revocation or suspension of appellant's license would disrupt the substantial volume of commerce flowing from appellant through its dealers to Tennessee consumers, which is interstate in nature. (See Appendix N to Jurisdictional Statement, p. 72a).

Where, as here, facts determinative of the validity of a state statute are clearly established by proof, this Court repeatedly has exercised jurisdiction to adjudicate the validity of the statute in a suit to enjoin or prohibit its enforcement.

In *Public Utilities Commission of California* v. *United States*, 355 U. S. 534 (1958), a California statute required common carriers to obtain prior approval from the state Public Utilities Commission when negotiating with the Federal Government for special rates for shipment of government property. The Commission was authorized to grant approval to the common carriers to such extent and subject to such conditions as it considered just and reasonable. When the Commission indicated an intention to enforce the Act, the United States brought a declaratory judgment action to have the Act declared an unconstitutional burden on the Federal Government. The action was brought without waiting to determine whether approval would be given to the common carriers by the Commission. This Court adjudicated the merits of the constitutional claim, stating (p. 540):

"* * * where the only question is whether it is constitutional to fasten the administrative procedure onto the litigant, the administrative agency may be

> defied and judicial relief sought as the only effective way of protecting the asserted constitutional right. * * *" 355 U. S. at 540.

The situation in this case is closely analogous. Appellant asserts that it is unconstitutional to require it to submit a dispute to a manifestly biased tribunal, specifically composed as authorized by the statute, and empowered to apply unconstitutionally vague and capricious standards. In these circumstances, appellant should not be required to submit its dispute with the complaining dealer to the Commission, where its right to do business in the State must be revoked or suspended if the Commission invokes the only remedy or penalty open to it under the statute. Compare *Ex Parte Young*, 209 U. S. 123, 165 (1908); *Thornhill* v. *Alabama*, 310 U. S. 88, 97 (1940).

In *Huron Portland Cement Co.* v. *Detroit*, 362 U. S. 440 (1960), criminal proceedings were pending against a ship owner for violation of the Detroit Smoke Abatement Code. Before there had been an adjudication of guilt or innocence, the defendant brought suit in a state court to enjoin further prosecution of the criminal action on the ground that the Code was unconstitutional. On appeal under 28 U. S. C. § 1257 (2), this Court adjudicated the merits of the constitutional claim. As the opinion pointed out, "Structural alterations would be required in order to insure compliance with the Code" (362 U. S. at 441). This made clear the dimensions of the burden on commerce involved. It remained only for this court to determine whether the burden was undue.

Similarly, appellant here would be required to forego insistence upon effective sales representation by Tennessee dealers in order to insure compliance with the Tennessee statute. This appeal therefore stands in substantially the same posture as that in the *Huron Portland Cement* case.

It remains only for this Court to determine whether the burdens imposed by the statute, including compulsory submission of the dispute between appellant and the complaining dealer to a tribunal composed of dealers, constitute undue burdens upon commerce, denials of due process or impairment of obligations of contracts.

In *Chicago* v. *Atchison, T. & S. F. Ry.*, 357 U. S. 77 (1958), a local ordinance required that a certificate of public convenience and necessity be secured for any new interterminal taxicab service. Without applying for a certificate for the service desired, a suit was brought for declaratory judgment that the ordinance was inapplicable or invalid. This Court held that "Since * * * § 28-31.1 is completely invalid insofar as it applies to Transfer, that company was not obligated to apply for a certificate of convenience and necessity and submit to the administrative procedures incident thereto before bringing this action. * * *" 357 U. S. at 89.

Similarly, in the present case, appellant asserts that both the provisions establishing the Tennessee Motor Vehicle Commission, and the criteria under which it is to adjudicate disputes between appellant and its dealers, are completely invalid as applied to appellant. The facts dispositive of this claim are clearly established. Therefore, as in *Atchison*, the validity of the administrative procedures should be adjudicated before appellant is compelled to submit to them.

In contrast with the situation in this case, in *Rescue Army* v. *Municipal Court*, 331 U. S. 549 (1947), the constitutional issues came to this Court in "highly abstract form". In that case it was uncertain on precisely what charges the appellant was to be tried under the state statute. Indeed, the Court did not have before it "the benefit on this record of even the literal text of the charges." 331 U. S. at 575.

Here the charges against appellant are clear (Appendix F to Jurisdictional Statement, p. 45a), and the Tennessee statute, as interpreted by the State Court, is unequivocal in its imposition of the burdens which appellant contends are violative of the Due Process, Commerce and Contract Clauses.

The threat posed by the Tennessee statute to the vital interests of appellant in this case also is clear. The necessary effect of a violation of the statute by appellant in terminating the franchise of the complaining dealer is suspension or revocation of its license to do business in the State of Tennessee. Such a result, not only as to appellant but as to all of its dealers and the public in that State as well, would be disastrous and far-reaching. This consideration, in addition to the national public importance of the issues presented, as illustrated in Exhibit 2 to this petition warrants decision of this appeal on the merits.

It is respectfully submitted that appellant, its dealers and the public in Tennessee, should not be required to incur such great risks by subjecting appellant to a hearing before a biased tribunal, empowered to take such drastic action under statutory standards that do not meet the requirements of constitutional principles.

For these reasons, it is respectfully submitted that the Federal questions presented by this appeal are ripe for adjudication here.

CONCLUSION

Appellant respectfully submits that this petition for rehearing should be granted and that probable jurisdiction should be noted. Should the dismissal stand, however, the order of dismissal should be amended to state explicity that it is without prejudice to the consideration in the future of any constitutional questions arising upon further pro-

ceedings, as was done in *Rescue Army* v. *Municipal Court* (331 U. S. at 585). This would be appropriate to preclude any claim in a further proceeding that the dismissal is *res judicata* as to the Federal questions. The need for such an amendment is further indicated because the order of dismissal already has been widely misinterpreted. As shown by trade publications (appended as Exhibit 2 to this petition) automobile dealer groups have erroneously construed it as an affirmation of the constitutionality of the kind of legislation here involved.

Respectfully submitted,

William T. Gossett
WILLIAM T. GOSSETT
Attorney for Ford Motor Company
Ford Motor Company
The American Road
Dearborn, Michigan

WILLIAM T. GOSSETT
L. HOMER SURBECK
WRIGHT TISDALE
RICHARD B. DARRAGH
RICHARD A. GIVENS
CECIL SIMS
Of Counsel

Dated: December 9, 1960

CERTIFICATE OF COUNSEL

I, William T. Gossett, a member of the Bar of this Court, certify that this petition for rehearing is presented in good faith and not for delay.

William T. Gossett
WILLIAM T. GOSSETT
Attorney for Ford Motor Company
Ford Motor Company
The American Road
Dearborn, Michigan

December 9, 1960

EXHIBIT 1.

Federal Questions Presented in Notice of Appeal and Jurisdictional Statement (p. 7-8)

I. Whether the provisions of the statute authorizing revocation of a manufacturer's license by the Motor Vehicle Commission are invalid, on their face or as applied to appellant, under the Due Process Clause of the Fourteenth Amendment of the Federal Constitution since:

A. Bias and prejudice against the manufacturer, and pecuniary interest in issues before the Commission, are inherent in the Commission because

(1) the statute (§ 59-1703), as applied and as interpreted by the Supreme Court of Tennessee, requires that the Commission be composed exclusively of automobile dealers who are selected from a list supplied by a private association of automotive dealers; in spite of the fact that

(2) each of the grounds for revocation specified in § 59-1714(g) and (h) of the statute involves controversies between a manufacturer and a dealer as to which dealers cannot be considered impartial and in which members of the Commission, all of whom are automobile dealers and a majority of whom are franchised new car dealers, have a pecuniary interest.

B. The statutory language is so vague and uncertain that it is not reasonably possible to ascertain the limits of the conduct prescribed.

II. Whether the statute is repugnant to the Commerce Clause of the Federal Constitution, Art. I, § 8, cl. 3, since

it unduly interferes with the flow of interstate commerce without clear necessity to do so by:

A. Authorizing disruption of interstate commerce through mandatory revocation or suspension of a motor vehicle manufacturer's license to do business in the State of Tennessee if the Commission shall find that such manufacturer has violated the statute in its relations with a single dealer.

B. Imposing restraints upon the volume of interstate commerce for local economic advantage by:

(1) prohibiting a motor vehicle manufacturer from requiring a dealer to order or accept delivery of "any" new vehicle not "voluntarily" ordered, even though the dealer may have failed to exert sufficient sales effort to fulfill his agreement and to give the manufacturer adequate representation;

(2) requiring that a motor vehicle manufacturer deliver to Tennessee dealers all vehicles that are publicly advertised for immediate delivery, within 60 days after ordered, even though there is a shortage in interstate commerce as frequently occurs when new models are first introduced; and

(3) imposing undue restrictions upon termination of ineffective dealers and upon enfranchisement of replacement dealers and additional dealers.

III. Whether the statute, as applied to appellant, violates the Contract Clause of the Federal Constitution, Art. I, § 10, and the Due Process Clause of the Fourteenth Amendment by impairing, without clear necessity, the exercise of appellant's contractual rights to terminate ineffective dealers.

EXHIBIT 2

A. Automotive News, December 5, 1960, pages 3 and 8

State Laws Reaffirmed . . .

Curbs on Factories Given Shot in Arm

By Maynard M. Gordon
News Editor

STATE laws governing factory conduct towards franchised dealers have received a revitalizing shot from the United States Supreme Court.

By refusing to upset the stringent Tennessee law, the Supreme Court has swept away a cloud of uncertainty which had left the 18 state regulations largely unenforceable.

The Tennessee case, pressed hard by Ford with aid from Chrysler Corp. and General Motors, was the first to reach the highest U. S. court. The Tennessee Supreme Court had found the state's law constitutional, and the U. S. Supreme Court summarily dismissed Ford's appeal from the Tennessee ruling.

• • •

PENDING a U. S. Supreme Court determination on state factory-practices laws, dealer associations in many non-control states had declined to ask their legislatures for similar enactments. The Court's implied affirmation of the state regulations is expected to pave the way for a rash of proposals across the country at legislative sessions next year.

According to attorneys and state association managers, state laws would be more desirable from a dealer-protective level than the Federal good-faith law for three reasons:

1. The model Tennessee and Wisconsin laws, both of which have now been upheld by their supreme courts, are more assertive and restrictive than the Federal law.

2. There is more local control over factory-dealer practices. All-dealer licensing commissions adjudicate violations in five states—Arkansas, Louisiana, Nebraska, Oklahoma and Tennessee.

3. Factories have won most cases under the federal law so far, and a constitutionality test is still to come before a Circuit Court of Appeals, much less the U. S. Supreme Court.

• • •

WHY were the factories so concerned about the Tennessee law?

Early press reports on the U. S. Supreme Court's action mistakenly placed emphasis on that portion of the Tennessee law which makes it possible to deny a factory its operating license in the Volunteer State for any proof of violation.

Such a possibility is embodied in the law, just as the Tennessee Motor Vehicle Commission may withhold or revoke a dealer's license. But the issue of keeping Ford from selling cars to Tennessee dealers, never was raised, and, dealers believe, never will be.

What Ford and its friendly competitors were primarily agitating against in the Tennessee

case were clauses designed to protect franchised dealers from cancellations, terminations or nonrenewals "without due regard to the equities of said dealer" and "without just provocation."

These qualifications are "vague and uncertain" and leave clarification to a body composed entirely of dealers, Ford charged.

• • •

IN EFFECT, the factories were fighting for their right to contract as they pleased and to get rid of unsatisfactory or inefficient dealers as they pleased.

"It seems to us," Tennessee Supreme Court Justice Hamilton S. Burnett wrote, "that the application of these terms objected to can be fairly administered by the commission in applying the ordinary meaning of such terms to them."

However, in upholding the Tennessee law as constitutional, Justice Burnett did agree with Ford that the statute went too far in forbidding auto producers from "inducing" dealers to commit acts.

Factories can be stopped from "coercion" but not from "inducement," he explained, on the grounds that "inducement clearly means the art of selling" and thus raises a question of legal constitutionality.

Justice Burnett also ruled unconstitutional a section forbidding the factories from letting dealers choose new-vehicle transportation facilities.

• • •

IN FORD'S case, the Tennessee dealer whom it sought to sever was Cocke County Motor Co., Newport. Cocke County Motor's status now will have to be decided by the Motor Vehicle Commission, if Ford still wants to drop the franchise. Cocke County has continued to sell Ford products while the controlling law has undergone its court test.

Justice Burnett struck down Ford's attack on the all-dealer complexion of the commission by declaring that all Tennessee regulatory boards are made up of members of the profession which that board governs.

"The reason for this is perfectly obvious," he added.

The justice also denied a Ford allegation that the legislature had given the commission legislative power.

"It has long been settled in this state that under the police power the legislature may extend to these boards or commissions the right to administer regulatory laws," he noted.

In refuting factory arguments against the anti-coercion provisions of the act, Justice Burnett referred to a Tennessee Supreme Court decision made 60 years ago, which asserted:

". . . The Legislature, as it thought, found the employe at a disadvantage in this respect, and by this enactment undertook to place him and the employer more nearly upon an equality. This alone commends the Act and entitles it to a place on the statute book as a valid police regulation."

JUSTICE BURNETT noted that this identical provision was approved by the majority of the Wisconsin Supreme Court when that state's factory-dealer licensing law was upheld in another Ford dealer case.

He observed that the Louisiana Supreme Court, in May, 1958, condoned the right of that state's legislature to enact a factory-practices law. He noted that a Colorado licensing law was overturned by a three-judge federal court in a GM case, but dismissed this opinion as lacking the "persuasive power" of the Louisiana and Wisconsin opinions.

Last May, a Milwaukee federal judge refused to try a termination case involving a DeSoto-Plymouth dealer but at the same time dissolved a state court injunction preventing

Chrysler Corp. from terminating the dealer's franchise. The federal judge ordered a state court trial under the Wisconsin licensing law.

The Tennessee and Wisconsin laws are two of the 13 in the U.S. providing for factory-and-dealer licensing, together with codes of fair practices. The other states in this category are Arkansas, Florida, Iowa, Kentucky, Louisiana, Mississippi, Nebraska, North Carolina, Oklahoma, Rhode Island and Virginia.

Five other states impose less stringent curbs on factories. Minnesota and South Dakota merely bar "unfair" nonrenewals or cancellations, respectively, without going so far as the other 13 states in cracking down on threats to terminate or in regulatory provisions. They and Wyoming, however, join the 13 states in forbidding coercion or attempted coercion of dealers to accept unwanted goods.

New York simply outlaws "unfair" nonrenewals or terminations. Neither New York nor California, which merely bans misrepresentation in factory advertising, go along on the shipments-coercion ban.

B. Automotive News, November 28, 1960, pages 1 and 4

State Factory-Dealer Law Wins Supreme Court Nod

By Maynard M. Gordon
News Editor

THE United States Supreme Court has for the first time affirmed the right of the states to impose stringent controls on factory-dealer relations.

The Court did this last week by unanimously dismissing a factory appeal of a Tennessee decision under which Ford was prevented from cancelling a dealer's franchise.

Declaring that Ford's appeal lacked a "properly presented federal question," the high tribunal left the way open for a later test conditioned on new arguments about the constitutionality of state dealer-factory licensing laws.

But, the tone of the Court's stand in the case was such that a major victory appeared all but certain for new-car dealers who have engineered strict licensing safeguards into law in 18 states. And association managers were predicting last week that similar proposals might be advanced in non-control states next year.

* * *

AFTER a succession of courtroom successes under the federal good-faith law, auto industry attorneys were mildly dismayed by the dealer victory on a state statute. Both General Motors and Chrysler contributed briefs to the Ford side of the Tennessee case, making it a major test of dealer-factory licensing legislation.

Other participants in the cases included the Tennessee Automotive Assn., which helped the cancelled Ford dealer, Cocke County Motor Co., of Newport. The defense was joined by the Tennessee Independent Automobile Dealers Assn. and the Tennessee Auction Assn.

The Tennessee Dealer-Manufacturer Licensing Law went into effect in 1955. Like identical laws adopted at the same time in a number of Southern states, it established an all-dealer regulatory commission empowered to prevent any factory, dealer or salesman from obtaining or keeping an operating license for violations.

The factory restraint in the Tennessee code which triggered the test case rules out an "unfair" cancellation of a franchise or a non-renewal of a franchise "without due regard to the equities of the said dealer and without just provocation."

* * *

OWNERS of Cocke County Motor Co., E. R. Walker and E. R. Walker jr., appealed to the Tennessee Motor Vehicle Commission under this provision after their franchise was revoked by Ford.

At this stage, Ford obtained a court injunction preventing the Commission from deciding the status of the franchise pending a court determination of the legality of the licens-

ing law. In return, Cocke County Motor was granted an injunction keeping its Ford franchise operative while the case went through the courts.

Chancellor Ned Lentz, of Nashville Chancery Court, heard the arguments first. He declared the law unconstitutional and ordered the Commission out of business.

"Limiting the right of manufacturers to weed out inefficient dealers and those who fail to offer proper service to customers would certainly harm the public," Lentz stated.

Last March, the dealer and TAA won a reversal of the lower court and a ruling that the law was constitutional from the Tennessee Supreme Court. It was this decision—also unanimous—which the U. S. Supreme Court let stand last week.

"The purpose of this act," declared Justice Hamilton Burnett for the Tennessee Supreme Court, "is to eliminate harmful trade practices and dishonest dealings resulting in injury to the purchasing public. Such an act is constitutional."

• • •

UNPROVOKED franchise terminations are one of nine practices denied to factories by the Tennessee law. The others are:

1. Coercing a dealer to take unordered vehicles or parts.

2. Coercing a dealer to order or accept vehicle options not included in the advertised list price of the vehicle.

3. Coercing a dealer to order parts, accessories or equipment from outside manufacturers.

4. Refusing to deliver vehicles to dealers within 60 days after receipt of the dealer's order.

5. Coercing a dealer to commit an "unfair" act by threatening franchise cancellation.

• • •

SIX. Offering any items for sale to a dealer as part of negotiations for a new or renewed franchise.

7. Refusing to let the dealer choose the type of transportation in getting new vehicles.

8. Signing up a dealer who does not have adequate service facilities.

Dealers are barred from doing the following:

1. Requiring a vehicle purchaser to take unwanted options.

2. Selling a demonstrator as new and unused.

3. Selling a new vehicle without a warranty.

4. Operating without an "established place of business."

5. Using "false or misleading" advertising.

• • •

A POINT raised by Ford in its opposition to the law was the all-dealer nature of the Motor Vehicle Commission. Tennessee's governor selects a new-car or used-car dealer of five years' experience from each of the state's nine Congressional districts.

In addition to being denied licenses under the law, factory or dealer violators may be fined $500 or imprisoned for six months.

Cocke County Motor Co. had asked the commission to rescind Ford's license to sell cars to Tennessee dealers, but this was not done and is not expected to be.

No punitive action against Ford is likely to be invoked until the Tennessee Supreme Court gets back official notice of the U. S. Supreme Court's dismissal of Ford's appeal.

Then the Motor Vehicle Commission finally will get a chance to try the Newport case on its merits, if Ford still wants to cancel Cocke County Motor Co.

C. Tennessee Automotive Association

November 28, 1960

BULLETIN #40-60

1—SUPREME COURT UPHOLDS TENNESSEE MVC LAW

The long court fight over the TAA-sponsored and supported Tennessee Dealer-Manufacturing Licensing Law, Chapter 79 of the Public Acts of 1955 as amended, ended last week in victory. The Supreme Court of the United States rejected the Ford Motor's appeal from the Tennessee Supreme Court decision upholding the Law provision objected to by the Ford Motor Company, provides that an automobile manufacturer licensed to do business in the State may be revoked on a finding that the manufacturer's cancellation of a dealer's franchise is, in the language of the Law, "without due regard to the equities of the said dealer and without just provocation."

The Supreme Court's ruling was handed down upon the basis that no substantial Federal question was presented in the appeal which would permit the Supreme Court to take jurisdiction.

TAA is advised by a major Detroit automotive publication that other states not having similar enactments, which have been awaiting a ruling in the Ford-Tennessee case, will now press forward with Tennessee type legislation.